VOLUME 45, NUMBER 7 LEGISLATIVE RESEARCH COMMISSION JANUARY 1, 2019

ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, December 14, 2018.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on January 9, 2019, at 11:00 a.m. in Room 149. Please check the LRC Website for ARRS meeting and agenda updates.

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The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.

Administrative Regulation Review Subcommittee
Tentative Meeting Agenda
Tuesday, January 9, 2019, time TBA

1. **Call to Order and Roll Call**

2. **Regulations for Committee Review**

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Division of Student and Administrative Services
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Education Processional Standards Board
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016 KAR 002:210. Provisional and professional certificate for orientation and mobility specialist.
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FINANCE AND ADMINISTRATION CABINET
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103 KAR 016:270. Apportionment; receipts factor.

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Board of Cosmetology
201 KAR 012:030. Licensing, permits, and examinations.
201 KAR 012:082. Education requirements and school administration.
201 KAR 012:260. Fees.

Board of Nursing
201 KAR 020:056. Advanced practice registered nurse licensure and certification requirements.
201 KAR 020:062. Standards for advanced practice registered nurse (APRN) programs of nursing.
201 KAR 020:161. Investigation and disposition of complaints.
201 KAR 020:162. Disciplinary proceedings.
201 KAR 020:215. Continuing competency requirements.
201 KAR 020:220. Nursing continuing education provider approval.
201 KAR 020:226. Repeal of 201 KAR 020:235, 201 KAR 020:420, 201 KAR 020:430, 201 KAR 020:440, and 201 KAR 020:460.
201 KAR 020:240. Fees for applications and for services.
201 KAR 020:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.
201 KAR 020:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.
201 KAR 020:310. Faculty for prelicensure registered nurse and practical nurse programs.
201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.
201 KAR 020:340. Students in prelicensure registered nurse and practical nurse programs.
201 KAR 020:350. Educational facilities and resources for pre-licensure registered nurse and practical nurse programs.
201 KAR 020:360. Continuing approval and periodic evaluation
201 KAR 020:362. Fines for programs of nursing.
201 KAR 020:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

Board of Social Work
201 KAR 023:150. Complaint procedure, disciplinary action, and reconsideration. (Deferred from December)

Board of Licensure for Marriage and Family Therapists
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400 KAR 002:070. The Office of Kentucky Nature Preserves.
400 KAR 002:080. Dedication of nature preserves and registration of natural areas.
400 KAR 002:090. Management, use, and protection of nature preserves and natural areas.
400 KAR 002:100. Hearings and appeals.
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500 KAR 002:030. Special law enforcement officers: evaluation examination. (Deferred from December)

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704 KAR 003:292. Education of migratory children. (Not Amended After Comments)
704 KAR 003:303. Required academic standards. (Not Amended After Comments)
704 KAR 003:305. Minimum requirements for high school graduation. (Amended After Comments)
704 KAR 003:365. Complaint procedures for programs under the Elementary and Secondary Education act of 1965. (Not Amended After Comments)

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704 KAR 008:020. Kentucky Academic Standards for Reading and Writing. (Deferred from December)
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921 KAR 003:050. Claims and additional administrative provisions.
921 KAR 003:060 & E. Administrative disqualification hearings and penalties. ("E" expires 4-30-2019)
921 KAR 003:070 & E. Fair hearings. ("E" expires 4-30-2019)

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922 KAR 001:050. State funded adoption assistance. (Comments Received, SOC ext.; due 12-14-2018)
922 KAR 001:100 & E. Public agency adoptions. ("E" expires 04-14-2019) (Amended After Comments)
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401 KAR 039:080. Hazardous waste handlers. (Deferred from December)
401 KAR 039:090. Hazardous waste permit program. (Deferred from December)
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401 KAR 042:020. UST system requirements, notification, registration, and annual fees. (Comments Received; SOC ext. due 01-15-2019)

401 KAR 042:060. UST system release and corrective action requirements. (Comments Received; SOC ext. due 01-15-2019)
401 KAR 042:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement. (Comments Received; SOC ext. due 01-15-2019)
401 KAR 042:330. Small Owners Tank Removal Account. (Comments Received; SOC ext. due 01-15-2019)
401 KAR 042:341. Repeal of 401 KAR 042:011, 042:030, 042:040, 042:045, 042:050, 042:070, 042:080, 042:090, 042:095, 042:200, 042:290, 042:300, 042:316, 042:320, 042:335, and 042:340. (Comments Received; SOC ext. due 01-15-2019)

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810 KAR 001:301. Repeal of 810 KAR 001:004, 810 KAR 001:005, 810 KAR 001:007, 810 KAR 001:008, 810 KAR 001:009, 810 KAR 001:010, 810 KAR 001:012, 810 KAR 001:014, 810 KAR 001:015, 810 KAR 001:016, 810 KAR 001:017, 810 KAR 001:018, 810 KAR 001:021, 810 KAR 001:024, 810 KAR 001:026, 810 KAR 001:027, 810 KAR 001:028, 810 KAR 001:029, 810 KAR 001:030, 810 KAR 001:037, 810 KAR 001:040, 810 KAR 001:050, 810 KAR 001:060, 810 KAR 001:070, 810 KAR 001:080, 810 KAR 001:090, 810 KAR 001:100, 810 KAR 001:110, 810 KAR 001:130, 810 KAR 001:140, 810 KAR 001:145, 810 KAR 001:150, and 810 KAR 001:300. (Deferred from January)
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810 KAR 002:020. Thoroughbred and flat racing officials. (Deferred from January)
810 KAR 002:030. Chemical dependency. (Deferred from January)
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810 KAR 002:050. Judges and Standardbred racing officials. (Deferred from January)
810 KAR 002:060. Owners' authorized agents and jockey agents. (Deferred from January)
810 KAR 002:070. Thoroughbred and other flat racing associations. (Deferred from January)
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810 KAR 003:010. Licensing of racing associations. (Deferred from January)
810 KAR 003:020. Licensing of racing participants. (Deferred from January)
810 KAR 003:030. Licensing totalizator companies. (Deferred from January)
810 KAR 003:040. Advance deposit account wagering. (Deferred from January)
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810 KAR 004:010. Horses. (Deferred from January)
810 KAR 004:020. Weights. (Deferred from January)
810 KAR 004:030. Entries, subscriptions, and declarations. (Deferred from January)
810 KAR 004:040. Running of the race. (Deferred from January)
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810 KAR 004:060. Objections and complaints. (Deferred from January)
810 KAR 004:070. Jockeys and apprentices. (Deferred from January)
810 KAR 004:080. Steeplechase racing. (Deferred from January)
810 KAR 004:090. Owners. (Deferred from January)
810 KAR 004:100. Trainers. (Deferred from January)
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810 KAR 005:001. Definitions. (Deferred from January)
810 KAR 005:010. Registration and identification of horses. (Deferred from January)
810 KAR 005:020. Eligibility and classification. (Deferred from January)
810 KAR 05:030. Claiming races. (Deferred from January)
810 KAR 005:040. Farm, corporate, or stable name. (Deferred from January)
810 KAR 005:050. Stakes and futurities. (Deferred from January)
810 KAR 005:060. Entries and starters. (Deferred from January)
810 KAR 005:070. Running of the race. (Deferred from January)
810 KAR 005:080. Harness racing and county fairs. (Deferred from January)
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810 KAR 006:020. Calculation of payouts and distribution of pools. (Deferred from January)
Incentive and Development Funds
810 KAR 007:010. Backside improvement fund. (Deferred from January)
810 KAR 007:020. Kentucky thoroughbred breeders' incentive fund. (Deferred from January)
810 KAR 007:030. Kentucky thoroughbred development fund. (Deferred from January)
810 KAR 007:040. Kentucky Standardbred development fund and Kentucky Standardbred breeders' incentive fund. (Deferred from January)
810 KAR 07:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund. (Deferred from January)
810 KAR 007:070. Violations, discipline, disputes, and investigation. (Deferred from January)
Medication Guidelines
810 KAR 008:010. Medication; testing procedures; prohibited practices. (Deferred from January)
810 KAR 008:020. Drug, medication, and substance classification schedule and withdrawal guidelines. (Deferred from January)
810 KAR 008:030. Disciplinary measures and penalties. (Deferred from January)
810 KAR 008:040. Out-of-competition testing. (Deferred from January)
810 KAR 008:050. International medication protocol as condition of a race. (Deferred from January)
810 KAR 008:060. Post-race sampling and testing procedures. (Deferred from January)
Hearings and Appeals
810 KAR 009:010. Hearings, reviews and appeals. (Deferred from January)
Harness Racing
811 KAR 001:301. Repeal of 811 KAR 001:010, 811 KAR 001:015, 811 KAR 001:020, 811 KAR 001:025, 811 KAR 001:030, 811 KAR 001:035, 811 KAR 001:037, 811 KAR 001:040, 811 KAR 001:045, 811 KAR 001:050, 811 KAR 001:055, 811 KAR 001:060, 811 KAR 001:065,

811 KAR 001:070, 811 KAR 001:075, 811 KAR 001:080, 811 KAR 001:085, 811 KAR 001:90, 811 KAR 001:093, 811 KAR 001:095, 811 KAR 001:100, 811 KAR 001:105, 811 KAR 001:110, 811 KAR 001:115, 811 KAR 001:120, 811 KAR 001:130, 811 KAR 001:140, 811 KAR 001:150, 811 KAR 001:185, 811 KAR 001:215, 811 KAR 001:220, 811 KAR 001:225, 811 KAR 001:230, 811 KAR 001:260, 811 KAR 001:280, 811 KAR 001:285, 811 KAR 001:290, and 811 KAR 001:300. (Deferred from January)

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 002:301. Repeal of 811 KAR 002:015, 811 KAR 002:020, 811 KAR 002:030, 811 KAR 002:035, 811 KAR 002:040, 811 KAR 002:045, 811 KAR 002:050, 811 KAR 002:056, 811 KAR 002:065, 811 KAR 002:070, 811 KAR 002:075, 811 KAR 002:080, 811 KAR 002:085811 KAR 002:090, 811 KAR 002:093, 811 KAR 002:096, 811 KAR 002:100, 811 KAR 002:105, 811 KAR 002:110, 811 KAR 002:130, 811 KAR 002:140, 811 KAR 002:150, 811 KAR 002:170, 811 KAR 002:180, 811 KAR 002:185, 811 KAR 002:190, 811 KAR 002:200, and 811 KAR 002:300. (Deferred from January)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
301 KAR 1:152E

This emergency administrative regulation establishes the requirements for the department's Asian Carp and Scaled Rough Fish Harvest Program. Asian carp continue to proliferate and negatively impact Kentucky Lake and Lake Barkley in western Kentucky. They consume the base of the aquatic food chain necessary for the growth and survival of important sportfish, such as bass and crappie. The department's Asian Carp and Scaled Rough Fish Harvest Program was created to help control the population of these invasive, exotic species. The current program allows commercial fishermen to use gill and trammel nets with a mesh size of 3.25 inches and greater. These nets have been effective in catching the majority of sizes of Asian carp, but are not effective in catching intermediate-size fish (3-6 pounds). There currently is a substantial number of these intermediate-size fish in both Kentucky and Barkley lakes due to a strong year class that was produced in 2015. This emergency regulation is necessary because it is critical that commercial fishermen be allowed to use smaller size mesh nets in order to catch these fish before they have a chance to reproduce and cause more damage to our natural resources. 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
FRANK JEMLEY III, Acting Commissioner

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

301 KAR 1:152E. Asian Carp and Scaled Rough Fish Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990
STATUTORY AUTHORITY: KRS 150.025(1)
EFFECTIVE: November 19, 2018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the department's Asian Carp and Scaled Rough Fish Harvest Program.

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

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

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

Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 003:022, shall be waived for a commercial fisherman who only harvests Asian carp in restricted waters.

Section 5. Department Requirements.
(1) The department shall:
(a) Maintain a list of program participants and their contact information, which shall be:
1. Provided to known fish buyers; and
2. Updated at least weekly; and
(b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.
(2) The department shall approve a qualified fishing request by assigning:
(a) A fishing location and boat ramp to a program participant,

except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and

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

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

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

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

(c) A requested date falls on:

1. Memorial Day;

2. Labor Day;

3. July 4; or

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

Section 6. Program Disqualification.

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

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

Section 7. Incorporation by Reference.

(1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 19, 2018 at 3 p.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

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

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

(c) How this administrative regulation conforms to the con-tent of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

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

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Harvest Program to now use gill and trammel nets with mesh size of 3 inches instead of 3.25 inches.

(b) The necessity of the amendment to this administrative regulation: There are currently a large number of Asian carp that are intermediate in size (3-6 pounds) that are not as susceptible to larger mesh gill and trammel nets. By allowing commercial fishermen to use 3-inch gill and trammel nets, they can effectively sample these smaller fish and sell them in potentially substantial markets. This will increase the overall removal of Asian carp from Kentucky's waters and also prevent many of these smaller fish from reproducing, as they are not sexually mature at this time.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect any commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Harvest Program. By promoting increased catch of Asian carp, this should increase the number of fishermen targeting these fish.

(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: Commercial fishermen fishing under the Asian Carp Harvest Program will now be allowed to use 3-inch mesh gill nets.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen should be able to harvest and sell more Asian carp which will benefit them economically.

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

(a) Initially: There will be minimal cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be minimal continual cost to the Department.

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

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

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

(9) TIERING: Is tiering applied? No. All commercial fisher-men fishing under the Asian Carp and Scaled Rough Fish Harvest Program must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement Di-vision will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how much revenue this administrative regulation will directly generate for the first year, but it is assumed the number of Asian carp removed and sold will increase.

(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 increased removal and sale of Asian carp in the future as a result of this administrative regulation should positively influence local revenue. However, the exact amount is unknown.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 010:820E

This emergency administrative regulation is being promulgated to implement state and federal changes to disproportionate share hospital distributions. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Emergency Amendment)

907 KAR 010:820E. Disproportionate share hospital distributions.

RELATES TO: KRS 205.565, 205.637, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(f), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.639, 205.640, 205.6401, 205.6403, 216.380(12), 42 C.F.R. Parts 412, 413, 447.252, 447.253, 447, Subpart E, 42 U.S.C. 1395ww(d)(5)(F), 1396a, 1396r-4

EFFECTIVE: November 30, 2018

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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes disproportionate share hospital fund distribution provisions in accordance with KRS 205.639,[~~and~~] 205.640, 205.6401, and 205.6403.

Section 1. Definitions.

(1) "Base year" means the year of historical Medicaid DSH survey data used to determine initial DSH payments[~~"Acute care hospital" is defined by KRS 205.639(1)~~].

(2)[~~"Countable resource" means cash or an asset readily convertible to cash including a checking account, savings account, stock, bond, mutual fund, certificate of deposit, money market account, or similar financial instrument.~~

~~(3) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.~~

~~(4)~~] "Department" is defined by KRS 205.639(4)[~~means the Department for Medicaid Services or its designated agent~~].

(3)[~~(5)~~] "Disproportionate share hospital" or "DSH" means an in-state hospital that:

(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and

(b) Meets the criteria established in 42 U.S.C. 1396r-4(d).

(4) "Final disproportionate share hospital payment" or "final DSH payment" is defined by KRS 205.639(6).

(5) "Hospital-specific disproportionate share hospital limit" or "hospital-specific DSH limit" is defined by KRS 205.639(7).

(6) "Initial disproportionate share hospital payment" or "initial DSH payment" is defined by KRS 205.639(8).

(7) "Medicaid disproportionate share hospital survey" or "Medicaid DSH survey" is defined by KRS 205.639(12).

(8) "Medicaid inpatient utilization rate" or "MIUR" is defined by KRS 205.639(14).

(9) "Total uncompensated care costs" is defined by KRS 205.639(19).[~~(6) "DRG" or "diagnosis related group" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.~~

~~(7) "DRG-reimbursed hospital" means an in-state hospital reimbursed via a DRG methodology pursuant to 907 KAR 010:825.~~

~~(8) "Federal Register" means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.~~

~~(9) "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis:~~

~~(a) To an individual who is:~~

~~1. Determined to be indigent in accordance with KRS 205.640; and~~

~~2. Not a Medicaid recipient; and~~

~~(b) For which an individual shall not be billed by the hospital.~~

~~(10) "Indigent care eligibility criteria" means the criteria as specified in Section 9 of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.~~

~~(11) "Inpatient equivalency" means the equivalency that is:~~

~~(a) Determined by taking a hospital's aggregate Medicaid DRG reimbursement, dividing it by the aggregate Medicaid DRG allowed days, and determining a per diem amount paid; and~~

~~(b) Based on the Medicaid schedule contained in the most recently finalized Medicare cost report.~~

~~(12) "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).~~

~~(13) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.~~

~~(14) "Private psychiatric hospital" is defined by KRS 205.639(2).~~

~~(15) "Pro rata basis" means a basis for allocating an amount proportionately to all hospitals within a hospital category.~~

~~(16) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 020:240.~~

~~(17) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.~~

~~(18) "State mental hospital" is defined by KRS 205.639(3).~~

~~(19) "Third-party payor" means a payor of a third party pursuant to KRS 205.510(16).~~

~~(20) "University hospital" is defined by KRS 205.639(4).~~]

Section 2. Disproportionate Share Hospital Distribution General Provisions.

(1) Beginning with the state fiscal year 2019 DSH payment, each DSH payment shall be made in accordance with KRS 205.639, 205.640, 205.6401, and 205.6403.

(2) During the determination of an initial DSH payment, the department may adjust a hospital's total uncompensated care costs reported on the hospital's base year Medicaid DSH survey if the amount reported appears likely to result in a substantial redistribution of DSH funds that could have been avoided by adjusting the hospital's total uncompensated care costs.

(3) If an overpayment has been identified and repayment was not made by the hospital on or before January 31, pursuant to KRS 205.640, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 3. Disproportionate Share Hospital Medicaid DSH Survey Submission Provisions.

(1) Each Medicaid DSH survey submitted for the purpose of determining initial DSH payment amounts shall be submitted in accordance with the timeline established in KRS 205.640.

(2) Each Medicaid DSH survey and supporting documentation submitted pursuant to subsection (1) of this section shall be updated prior to the start of the final DSH examination to incorporate more complete data.

(a) The updated Medicaid DSH survey and the accompanying supporting documentation shall be submitted no later than October 31 of the calendar year ending two (2) calendar years after the end of the state fiscal year to which the DSH payment pertains.

(b) The updated Medicaid DSH survey and the accompanying supporting documentation shall be submitted even if no changes were made since the original submission.

(c) A submission of a Medicaid DSH survey by a hospital shall serve as certification that all Medicaid and uninsured DSH data is:

1. Complete;

2. Accurate; and

3. In agreement with the hospital's internal records.

(d) Failure to submit a final DSH survey in accordance with paragraph (a) of this subsection or other required information for receipt of a final DSH payment shall result in:

1. A recoupment of the initial DSH payment; and

2. No calculation of a final payment by the department.

(3) If a provider does not have twelve (12) months of cost report data needed to determine an initial DSH payment, the cost report used in determining the provider's initial DSH payment shall be prioritized as follows:

(a) The most recent cost report, based on the fiscal year end, in the base year with greater than or equal to six (6) months of data;

(b) The most recent cost report, based on the fiscal year end, from the year prior to the base year with greater than or equal to six (6) months of data; or

(c) If a cost report is not available with at least six (6) months of data, the new provider proxy method shall be utilized pursuant to KRS 205.640(3)(e)1.d.

Section 4. Disproportionate Share Hospital Medicaid DSH Payment Appeals Provisions.

(1) An initial DSH payment shall not be subject to appeal in accordance with KRS 205.640.

(2) A final DSH payment shall be subject to appeal in accordance with 907 KAR 1:671.

Section 5. Disproportionate Share Hospital Medicaid DSH Survey Payment Redistribution Provisions. For state fiscal year 2011 to state fiscal year 2018, a DSH payment shall be redistributed in accordance with this section.

(1) A DSH payment found in the DSH audit process for a given state fiscal year that exceeds the DSH limit for a hospital shall be recouped from that hospital in order to reduce the DSH payment to the limit established pursuant to this administrative regulation.

(a) The excess amount identified shall be due to the department within sixty (60) days after notification.

(b) If a hospital does not submit the excess amount established pursuant to this subsection within sixty (60) days, the department shall withhold future payments to the hospital until the department has collected in full the amount owed by the hospital to the department.

(2) A payment that is recouped from a hospital as a result of the DSH audit shall be redistributed to hospitals that have been determined by the department to have been paid less than their hospital-specific DSH limit pursuant to this administrative regulation.

(3) Each redistribution shall:

(a) Occur proportionately to the original distribution of DSH funds; and

(b) Not exceed each hospital's specific DSH limit.

(4) If, because of the hospital-specific DSH limits, DSH funds cannot be fully redistributed within the original distribution pool established pursuant to subsection (3) of this section, the excess funds shall be redistributed to the other distribution pools in proportion to the original DSH payments made by the department.

(5) If the Medicaid program's original DSH payments do not fully expend the federal DSH allotment for any state fiscal year, the remaining DSH allotment shall be:

(a) Retroactively paid to each hospital that is determined to have received less than its hospital-specific DSH limit after consideration of any potential redistributions pursuant to subsection (1) of this section;

(b) Proportional to the original DSH payment made to each hospital; and

(c) Limited to each hospital's specific DSH limit.

Section 6. Federal Approval and Federal Financial Participation. The department's coverage of DSH payments or other services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation;

(2) Availability of state funds; and

(3) Centers for Medicare and Medicaid Services' approval.[~~A DSH distribution shall:~~

~~(1) Be made to a qualified hospital;~~

~~(2) Be based upon available funds in accordance with KRS 205.640;~~

~~(3) Be based upon a hospital's proportion of inpatient and outpatient indigent care from the preceding state fiscal year;~~

~~(4) Be a prospective amount. For example, a DSH distribution made to a hospital in October 2007 shall cover the state fiscal year beginning July 1, 2007 and ending June 30, 2008;~~

~~(5) Not be subject to settlement or revision based on a change in utilization during the year to which it applies; and~~

~~(6) Be made on an annual basis.~~

~~Section 3. Disproportionate Share Hospital Distribution to a DRG-Reimbursed Acute Care Hospital. The department shall determine a DSH distribution to a DRG-reimbursed acute care hospital by:~~

~~(1) Determining a hospital's average reimbursement per discharge;~~

~~(2) Dividing the hospital's average reimbursement per discharge by Medicaid days per discharge;~~

~~(3) Multiplying the amount established in subsection (2) of this section by the hospital's total number of inpatient indigent care days for the most recently completed state fiscal year to establish the hospital's inpatient indigent care cost;~~

~~(4) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091;~~

~~(5) Combining the inpatient indigent care cost established in subsection (3) of this section with the outpatient indigent care cost established in subsection (4) of this section to establish a hospital's indigent care cost total; and~~

~~(6) Comparing the total indigent care cost for each DRG-reimbursed hospital to the indigent care costs of all hospitals receiving DSH distributions under the acute care pool pursuant to KRS 205.640(3)(d) to establish a DSH distribution on a pro rata basis.~~

~~Section 4. Disproportionate Share Hospital Distribution to a~~

~~Critical Access Hospital, Rehabilitation Hospital or Long Term Acute Care Hospital. The department shall determine a DSH distribution to a critical access hospital, rehabilitation hospital, or long term acute care hospital:~~

~~(1) For the period beginning with the state fiscal year beginning July 1, 2007 and ending June 30, 2008 by:~~

~~(a) Multiplying the hospital's per diem rate in effect as of June 30, 2007 by its total number of inpatient indigent care days for the preceding state fiscal year (July 1, 2006 - June 30, 2007) to establish the hospital's inpatient indigent care cost;~~

~~(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091;~~

~~(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and~~

~~(d) Comparing the indigent care cost totals for each critical access hospital, rehabilitation hospital and long term acute care hospital to the indigent care costs of all hospitals receiving DSH distributions from the acute care pool pursuant to KRS 205.640(3)(d) to establish a hospital's DSH distribution on a pro rata basis; and~~

~~(2) For the state fiscal year period beginning July 1, 2008 and subsequent state fiscal years, by:~~

~~(a) Multiplying the hospital's per diem rate in effect as of August 1 of the state fiscal year period included in the state fiscal year period referenced in subsection (2) of this Section by its total number of inpatient indigent care days for the preceding state fiscal year to establish the hospital's inpatient indigent care cost;~~

~~(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091;~~

~~(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and~~

~~(d) Comparing the indigent care cost totals for each critical access hospital, rehabilitation hospital and long term acute care hospital to the indigent care costs of all hospitals receiving DSH distributions from the acute care pool pursuant to KRS 205.640(3)(d) to establish a hospital's DSH distribution on a pro rata basis.~~

~~Section 5. Disproportionate Share Hospital Distribution to a Private Psychiatric Hospital. The department shall determine a DSH distribution to a private psychiatric hospital:~~

~~(1) For the period beginning with the state fiscal year beginning July 1, 2007 and ending June 30, 2008 by:~~

~~(a) Multiplying the hospital's per diem rate in effect as of June 30, 2007 by its total number of inpatient indigent care days for the preceding state fiscal year (July 1, 2006 - June 30, 2007) to establish the hospital's inpatient indigent care cost;~~

~~(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091 or by establishing an inpatient equivalency;~~

~~(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and~~

~~(d) Comparing the indigent care cost totals of each private psychiatric hospital to establish, using the DSH funding allocated to private psychiatric hospitals, a private psychiatric hospital's DSH distribution on a pro rata basis; and~~

~~(2) For the state fiscal year period beginning July 1, 2008 and subsequent state fiscal years, by:~~

~~(a) Multiplying the hospital's per diem rate in effect as of August 1 of the state fiscal year period included in the state fiscal year period referenced in subsection (2) of this Section by its total number of inpatient indigent care days for the preceding state fiscal year to establish the hospital's inpatient indigent care cost; and~~

~~(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091 or by establishing an inpatient equivalency;~~

~~(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and~~

~~(d) Comparing the indigent care cost totals of each private psychiatric hospital to establish, using the DSH funding allocated to private psychiatric hospitals, a private psychiatric hospital's DSH distribution on a pro rata basis.~~

~~Section 6. Disproportionate Share Hospital Distribution to a State Mental Hospital. The Department shall determine a DSH distribution to a state mental hospital by:~~

~~(1) Comparing each state mental hospital's costs of services provided to individuals meeting the indigent eligibility criteria established in Section 9 of this administration regulation, minus any payment made by or on behalf of the individual to the hospital; and~~

~~(2) Using the DSH funding allocated to state mental hospitals to establish a state mental hospital's DSH distribution on a pro rata basis.~~

~~Section 7. Disproportionate Share Hospital Distribution to a University Hospital. The department's DSH distribution to a university hospital shall:~~

~~(1) Be based on the hospital's historical proportion of the costs of services to Medicaid recipients, minus reimbursement paid via 907 KAR 010:825 or 907 KAR 010:815, plus the costs of services to indigent and uninsured patients minus any distributions made on behalf of indigent and uninsured patients;~~

~~(2) Be contingent upon a facility providing up to 100 percent of matching funds to receive federal financial participation for distribution under this subsection; and~~

~~(3) Comply with KRS 205.640(3)(a)2.~~

~~Section 8. Indigent Care Eligibility. (1) Prior to billing a patient and prior to submitting the cost of a hospital service to the department as uncompensated, a hospital shall use the indigent care eligibility form, DSH-001, Application for Disproportionate Share Hospital (DSH) Program, and the Disproportionate Share Hospital (DSH) Program Manual, to assess a patient's financial situation to determine if:~~

~~(a) Medicaid or Kentucky Children's Health Insurance Program (KCHIP) may cover hospital expenses; or~~

~~(b) A patient meets the indigent care eligibility criteria.~~

~~(2) An individual referred to Medicaid or KCHIP by a hospital shall apply for the referred assistance, Medicaid or KCHIP, within thirty (30) days of completing the DSH-001, Application for Disproportionate Share Hospital Program (DSH), at the hospital.~~

~~Section 9. Indigent Care Eligibility Criteria. (1) A hospital shall receive disproportionate share hospital funding for an inpatient or outpatient medical service provided to an indigent patient under the provisions of this administrative regulation if the following apply:~~

~~(a) The patient is a resident of Kentucky;~~

~~(b) The patient is not eligible for Medicaid or KCHIP;~~

~~(c) The patient is not covered by a third-party payor;~~

~~(d) The patient is not in the custody of a unit of government that is responsible for coverage of the acute care needs of the individual;~~

~~(e) The hospital shall consider all income and countable resources of the patient's family unit and the family unit shall include:~~

~~1. The patient;~~

~~2. The patient's spouse;~~

~~3. The minor's parent or parents living in the home; and~~

~~4. Any minor living in the home;~~

~~(f) A household member who does not fall in one (1) of the groups listed in paragraph (e) of this subsection shall be considered a separate family unit;~~

~~(g) The annual countable resources of a family unit shall not exceed:~~

~~1. $2,000 for an individual;~~

~~2. $4,000 for a family unit size of two (2); and~~

~~3. Fifty (50) dollars for each additional family unit member;~~

~~(h) Countable resources shall be reduced by unpaid medical expenses of the family unit to establish eligibility; and~~

~~(i) The patient or family unit's gross income shall not exceed the federal poverty limits published annually in the Federal Register and in accordance with KRS 205.640.~~

~~(2) Except as provided in subsection (3) of this section, total annual gross income shall be the lessor of:~~

~~(a) Income received during the twelve (12) months preceding the month of receiving a service; or~~

~~(b) The amount determined by multiplying the patient's or family unit's income, as applicable, for the three (3) months preceding the date the service was provided by four (4).~~

~~(3) A work expense for a self-employed patient shall be deducted from gross income if:~~

~~(a) The work expense is directly related to producing a good or service; and~~

~~(b) Without it the good or service could not be produced.~~

~~(4) A hospital shall notify the patient or responsible party of his eligibility for indigent care.~~

~~(5) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6) months without another determination.~~

~~Section 10. Indigent Care Eligibility Determination Fair Hearing Process. (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 9 of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.~~

~~(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.~~

~~(3) A fair hearing regarding a patient's indigent care eligibility determination shall allow the individual to:~~

~~(a) Review evidence regarding the indigent care eligibility determination;~~

~~(b) Cross-examine witnesses regarding the indigent care eligibility determination;~~

~~(c) Present evidence regarding the indigent care eligibility determination; and~~

~~(d) Be represented by counsel.~~

~~(4) A hospital shall render a fair hearing decision within fourteen (14) days of the hearing and shall provide a copy of its decision to:~~

~~(a) The patient or responsible party who requested the fair hearing; and~~

~~(b) The department.~~

~~(5) A fair hearing process shall be terminated if a hospital reverses its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.~~

~~(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.~~

~~Section 11. Indigent Care Reporting Requirements. (1) On a quarterly basis, a hospital shall collect and report to the department indigent care patient and cost data.~~

~~(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.~~

~~Section 12. Merged Facility. If two (2) separate entities merge into one (1) organization and one (1) of the merging entities has disproportionate status and the other does not, the department shall retain for the merged entity the status of the entity which reported the highest number of Medicaid days paid.~~

~~Section 13. Incorporation by Reference. (1) The following material is incorporate by reference:~~

~~(a) "The Disproportionate Share Hospital (DSH) Program Manual", January 2008 edition; and~~

~~(b) The "DSH-001, Application for Disproportionate Share Hospital (DSH) Program", March 2007 edition.~~

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

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 28, 2018

FILED WITH LRC: November 30, 2018 at noon

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes disproportionate share hospital fund distribution provisions in accordance with KRS 205.639 and 205.640.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid program policies for disproportionate share hospital fund distributions.

(c) How this administrative regulation conforms to the con-tent of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing state and federal requirements relating to disproportionate share hospital fund distributions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by implementing state and federal requirements relating to disproportionate share hospital fund distributions.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation implement House Bill 289 from the 2018 Regular Session. House Bill 289 abolished the previous DSH payment methodology and implemented a new DSH payment methodology. The administrative regulation is amended to include new definitions of "base year", "hospital-specific DSH limit", "initial disproportionate share hospital payment", "Medicaid disproportionate share hospital survey", "Medicaid inpatient utilization rate", and "total uncompensated care costs". Additional changes align the DSH payment methodology with KRS 205.639, 205.640, 205.6401, and 205.6403 by allowing the department to adjust total uncompensated care costs, establish provisions relating to initial and final DSH survey submission, implement requirements for when a hospital does not have 12 months of cost report data, establish appeals provisions for DSH payments, establish DSH payment redistribution provisions, and clarify that DSH payments are contingent upon federal financial participation and approval and the availability of state funds.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to implement House Bill 289 from the 2018 General Assembly and conform the department's administrative regulations

and processes to the new requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by further implementing and clarifying the requirements established pursuant to KRS 205.639, 205.640, 205.6401, and 205.6403.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by further implementing and clarifying the DSH payment methodology established pursuant to House Bill 289.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to all inpatient acute care hospitals reimbursed by a diagnosis related grouper methodology. Currently, there are approximately sixty-five (65) acute care hospitals participating in the Kentucky Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No compliance action is mandated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Inpatient acute care hospitals will be reimbursed via a methodology designed to more accurately capture and reflect their costs.

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

(a) Initially: The amendment does not result in additional costs to the Department for Medicaid Services for the first year.

(b) On a continuing basis: The amendment does not result in additional costs to the Department for Medicaid Services for subsequent years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 447 Subpart E.

2. State compliance standards. KRS 205.639 to 205.6403, KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Requires that payments take into account hospitals that serve a disproportionate share of low income patients.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.639, 205.640, 205.6401, and 205.6403 authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no revenue above the current revenue level being generated for the first year for state or local government due to the amendment to 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? DMS anticipates no revenue above the current revenue level being generated in subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The amendment does not result in additional costs to the Department for Medicaid Services for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment does not result in additional costs to the Department for Medicaid Services 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 002:160E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1 to ensure an adequate supply of child care providers participating in the Child Care Assistance Program (CCAP) through provider payments more reflective of actual market costs and enhanced parental access to safe and affordable child care. The administrative regulation reinforces children's health, safety, and welfare through improved child care options for vulnerable households, including children receiving Child Protective Services, children with special needs, children of teen parents, children in foster care, children whose parents are transitioning from cash assistance, and children from low-income households. In addition, in accordance with KRS 13A.190(1)(a)2, the administrative regulation prevents the loss of federal funds through timely obligation of newly available federal funding. An ordinary administrative regulation would not allow the agency sufficient time to obligate federal funding and meet the needs of the vulnerable households served by the program. 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
ADAM M. MEIER, Secretary

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

922 KAR 002:160E. 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, 605.120(5), 620.020(10), 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, 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. 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, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

EFFECTIVE: November 30, 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 199.892 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 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 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; or

(m) Enrollment in a certified trade school or an accredited college or university.

(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 922 KAR 1:330, Section 1(5).

(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) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse;

(d) Qualified mental health professional as defined by KRS 600.020(52); or

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

(16)[~~(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.

(17)[~~(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.

(18)[~~(17)~~] "Infant" means a child who is less than one (1) year old.

(19)[~~(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.

(20)[~~(19)~~] "Parent" is defined by 45 C.F.R. 98.2.

(21)[~~(20)~~] "Part day" means child care that is provided for less than five (5) hours per day.

(22)[~~(21)~~] "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23)[~~(22)~~] "Preventive services" is defined by KRS 620.020(10).

(24)[~~(23)~~] "Provider" means the entity providing child care services, such as:

(a) A member of a limited liability corporation (LLC);

(b) The head of an organization;

(c) An owner of a corporation;

(d) A member of a partnership;

(e) An owner of a business;

(f) An individual provider; or

(g) A stockholder of a stock-holding company.

(25)[~~(24)~~] "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(26)[~~(25)~~] "Registered provider" means a child care provider who meets the requirements of 922 KAR 002:180.

(27)[~~(26)~~] "Related" means having one (1) of the following relationships:

(a) Child;

(b) Stepchild;

(c) Grandchild;

(d) Great-grandchild;

(e) Niece;

(f) Nephew;

(g) Sibling;

(h) Child in legal custody; or

(i) Child living in loco parentis.

(28)[~~(27)~~] "Responsible adult" means a person other than the applicant who is in the child's household and who is:

(a) The natural parent, adoptive parent, or stepparent; or

(b) The spouse of an individual caring for a child in loco parentis.

(29)[~~(28)~~] "School-age child" means a child who has reached the sixth birthday.

(30)[~~(29)~~] "State median income" or "SMI" means the estimated median income of households in the state.

(31)[~~(30)~~] "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

(a) Defined by 7 U.S.C. 2012; and

(b) Governed by 921 KAR Chapter 3.

(32)[~~(31)~~] "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33)[~~(32)~~] "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements.

(1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or

b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

a. Has a physical or mental disability; and

b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 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, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

a. Income;

b. Technical eligibility; and

c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have an extended period to verify information not to exceed three (3) months in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4)[~~11(4)~~] of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility.

(1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and

2. U.S. citizen or qualified alien;

(b) Is under age:

1. Thirteen (13) at the time of application or recertification; or

2. Nineteen (19) at the time of application or recertification and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

a. Licensed child-care center;

b. Certified child-care home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 002:090, Child-care center licensure;

2. Certified according to 922 KAR 002:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 002:180, 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 002:180 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 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 8[~~7~~] of this administrative regulation;[~~or~~]

(e) 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; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for up to three (3) months or in accordance with Section 9[~~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 8(6)(d)[~~7(6)(d)~~] of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.

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 11[~~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.

Section 6. State-Funded Workforce Training[~~Kentucky Works~~] Child Care Eligibility Determination.[~~(1)~~] A child shall be eligible for CCAP if the child:

(1)[~~(a)~~] Resides with an applicant who is participating in the:

(a) Kentucky Works Program described in 921 KAR 2:370; or

(b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2)[~~(b)~~] Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination.

(1) Effective June 28, 2019, to the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a. A certified trade school or an accredited college or university;

b. A program that leads to a degree or certification; and

c. Accordance with subsection (2) of this section;

2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;

3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;

4. Meets income eligibility criteria of Section 8 of this administrative regulation; and

5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and

(b) Meets the requirements established in Section 3 of this administrative regulation.

(2) While an applicant is enrolled in a certified trade school or an accredited college or university:

(a) The applicant's coursework shall be completed in-person or online; and

(b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.

(3) An applicant who does not complete a term at a trade school, college, or university in good academic standing shall be responsible for the cost of child care tuition for the term.[~~(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.~~]

Section 8[~~7~~]. Income Eligibility.

(1) A child shall be eligible for 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) 200[~~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 is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of a:

1. Kentucky Works supportive services payment pursuant to 921 KAR 2:017; or

2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;

(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. 1261, 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. 1261, 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 U.S.C. 20102(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;

(kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 007:015 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 four and one-third (4 1/3);

b. Biweekly amount by 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.

(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 9[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 10[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 Chart, effective December 1, 2018.

(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 Type I;
4. Licensed Type II;
5. Certified;
6[5]. Registered;
7[6]. Infant/Toddler;
8[7]. Preschool child; and
9[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 002:180 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 11[10]. Family Copayment.

(1) Unless a family copayment has been waived in accordance with Section 5(3) 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
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 12[~~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 DCC-94, Child Care Service Agreement and Certificate.

(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) DCC-94; or

(b) DCC-90.

(4) Notification of action. (a) 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) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;
2. Approval of an application; or
3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;
2. Discontinuance of a CCAP benefit;
3. Reason for adverse action;
4. Citation from an applicable state administrative regulation; and
5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18[~~17~~] of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) 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) 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 002:020.

(7) 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) 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 14(1)(c)[~~13(1)(c)~~] of this administrative regulation.

Section 13[~~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 002:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 002:090, Child-care center licensure;

(c) 922 KAR 002:100, Certification of family child-care homes;

(d)[~~922 KAR 002:110, Child-care center provider requirements;~~

~~(e)~~] 922 KAR 002:120, Child-care center health and safety standards;

(e)[~~(f)~~] 922 KAR 002:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f)[~~(g)~~] 922 KAR 002:190, Civil penalties;

(g)[~~(h)~~] 922 KAR 002:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

(h)[~~(i)~~] 922 KAR 002:280, Background checks for child care staff members, reporting requirements, and appeals[~~, upon its adoption~~].

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 002:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) A child in the custody of the cabinet;

(e) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(f)[~~(e)~~] Teen parents attending high school or pursuing a general equivalency degree (GED);

(g)[~~(f)~~] A K-TAP recipient attempting to transition off assistance through employment;

(h)[~~(g)~~] A parent whose K-TAP case has been discontinued

during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(i)[~~(h)~~] A low income working parent; or

(j)[~~(i)~~] A parent in education or training programs leading to self-sufficiency.

Section 14[~~13~~]. Provider Requirements.

(1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 002:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 002:090, Child-care center licensure;

3. 922 KAR 002:100, Certification of family child-care homes;

4.[~~922 KAR 002:110, Child-care center provider requirements;~~

~~5.~~] 922 KAR 002:120, Child-care center health and safety standards;

5[~~6~~]. 922 KAR 002:180, Requirements for registered child care providers in the Child Care Assistance Program;

6[~~7~~]. 922 KAR 002:190, Civil penalties;

7[~~8~~]. 922 KAR 002:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

8[~~9~~]. 922 KAR 002:280, Background checks for child care staff members, reporting requirements, and appeals[~~, upon its adoption~~]; and

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4) (a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 002:100 or 922 KAR 002:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 002:090[~~, 922 KAR 002:110,~~] and 922 KAR 002:120; or

b. For a certified family child-care home, 922 KAR 002:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 002:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 15[~~14~~]. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8[~~7~~] of this administrative regulation may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

Section 16[~~15~~]. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 002:020.

Section 17[~~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 11[~~10~~] of this administrative regulation or 922 KAR 002:020;

(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 14(1)(c)[~~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 002:100 or 922 KAR 002:120, unless an operating plan is approved in accordance with Section 14(4)[~~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 13(8)[~~12(8)~~] of this administrative regulation.

Section 18[~~17~~]. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

(a) 922 KAR 002:260; or

(b) 922 KAR 002:020.

Section 19[~~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 20[~~19~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 12/18[~~10/17~~];

(b) "DCC-90P, CCAP Job Search Documentation", 10/17;

(c) "DCC-94, Child Care Service Agreement and Certificate", 10/17;

(d) "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(e) "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(f) "DCC-94C, Provider Notification Letter", 10/17;

(g) "DCC-94E, Child Care Daily Attendance Record", 7/13;

(h) "DCC-97, Provider Billing Form", 04/13;

(i) "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(j) "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 12/18[~~10/17~~].

(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.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 28, 2018

FILED WITH LRC: November 30, 2018 at noon

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, phone (502) 564-3703, email Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation improves child care provider participation in CCAP and parental access to safe and affordable child care by increasing child care provider rates to no less than the 40th percentile of current market rates. In addition, the amendment qualifies a child for CCAP if the parent participates in the Supplemental Nutrition Assistance Program Employment and Training Program, or if the parent is a full-time postsecondary education student without work requirement. The amendment allows a higher income threshold, 200 percent of the 2018 federal poverty level, at redetermination to allow for greater parental earnings prior to CCAP ineligibility. The amendment gives the state administrating agency ability to use CCDF to support child care for children in foster care, providing a necessary support to foster parents. Lastly, the amendment to this administrative regulation 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 obligate additional federal CCDF funds awarded to Kentucky in a timely manner and to offer programmatic improvements promoting child care provider participation in CCAP and parental access to safe and affordable child care. The amendment preserves the health, safety, and welfare of the vulnerable populations served by CCAP.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of CCAP in accordance with federal laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 29, 2018, there were 21,077 families and 38,533 children enrolled in CCAP, and over 2,300 providers participating in CCAP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new action required on the part of regulated entities; rather regulated entities will realize enhanced provider reimbursement rates, a higher federal poverty level used for CCAP eligibility redetermination, and ability to qualify for CCAP if an applicant is enrolled full-time in a certified trade school or accredited college or university. In addition, the state administrating agency will be able to access CCDF for foster children's child care needs.

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

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Regulated entities will benefit from enhanced provider reimbursements, higher federal poverty level used for eligibility redeterminations, and opportunity to qualify for CCAP based upon full-time enrollment and good academic standing in a certified trade school or accredited college or university without work requirement.

(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 be implemented within available federal and state appropriations for CCAP. An additional federal award of discretionary CCDF funds has been received by the state, and similar award is anticipated in future years. In total, the projected impact of this amendment is approximately $42 million annually.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state general funds.

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

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Any local government or school district operating a child care program that receives CCAP will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. An additional federal award of discretionary CCDF funds has been received by the state, and like award is anticipated in future years. In total, the projected impact of this amendment is approximately $42 million annually.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. In total, the projected impact of this amendment is approximately $42 million annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(As Amended at ARRS, December 11, 2018)

32 KAR 1:030. Election finance statement forms; campaign contributions or expenditures in excess of $3,000.

RELATES TO: KRS 121.180[~~(1)~~]
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) ***authorizes[~~grants~~]***[~~authorizes~~] the Registry ***[~~the power~~]*** to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121.***[~~This administrative regulation specifies the forms to be used by candidates, slates of candidates, contributing organizations, and committees and incorporates those forms by reference.~~]*** KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. ***This administrative regulation specifies the forms to be used by candidates, slates of candidates, contributing organizations, and committees, and incorporates those forms by reference.***[~~This administrative regulation specifies the forms to be used by candidates, slates of candidates, and committees, and incorporates those forms by reference.~~]

Section 1. The following candidates, slates of candidates, contributing organizations, and committees shall file the reports required by KRS 121.180 on the forms incorporated by reference in this administrative regulation:

(1) Candidate campaign funds, gubernatorial slate campaign funds, political issues committees, and candidate-authorized campaign committees who register an intent to raise or spend more than $3,000 or actually receive[~~receiving~~] contributions or make[~~making~~] expenditures in excess of $3,000; and

(2) All permanent committees,[~~political issues committees,~~] caucus campaign committees, inaugural committees, contributing organizations, unauthorized campaign committees, and political party executive committees regardless of the amount of contributions or expenditures.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Candidate/Slate of Candidates ***Election Finance Statement***[~~Election Finance Statement~~]", reference KREF 006, revised 08/2018[~~10/2010~~];

(b) "Executive Committee/ Caucus Campaign Committee[~~County Executive and District Committee~~] Election Finance Statement", reference KREF 006/EC[~~KREF 006/E C & D~~], revised 08/2018[~~10/2010~~];

(c) "Unauthorized Campaign Committee/ Political Issues Committee Election Finance Statement", reference KREF 006/UCC-IC, revised 08/2018;[~~State Executive Committee Election Finance Statement", reference KREF 006/E S, revised 10/2010;~~]

(d) "Inaugural Committee Election Finance Statement", reference KREF 006/I, revised 08/2018[~~10/2010~~]; and

(e) "Permanent Committee (PAC)/ Contributing Organization Election Finance Statement", reference KREF 006/PAC-CO, revised 08/2018.[~~10/2010; and~~

~~(f) "Caucus Campaign Committee Election Finance Statement", reference KREF 006/C, revised 10/2010.~~]

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

CRAIG C. DILGER, Chairman
APPROVED BY AGENCY: August 22, 2018
FILED WITH LRC: August 31, 2018 at 3 p.m.
CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 11, 2018)

103 KAR 16:060. Income classification; apportionable[~~business~~] and nonapportionable[~~nonbusiness~~].

RELATES TO: KRS 141.010[~~(3)~~], 141.120
STATUTORY AUTHORITY: KRS 131.130[~~(1)~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.120 contains provisions for assigning to Kentucky the apportionable[~~business~~] income and non-apportionable[~~nonbusiness~~] income of multistate corporations.***[~~Income for purposes of classification as apportionable or non-apportionable includes gains and losses. Apportionable income is apportioned among jurisdictions by use of a formula. Non-apportionable income is specifically assigned or allocated to one (1) or more specific jurisdictions pursuant to express rules. An item of income is classified as apportionable income if it falls within the definition of apportionable income. An item of income is non-apportionable income only if it does not meet the definitional requirements for being classified as apportionable income.~~]*** This administrative regulation establishes criteria for classification of corporate income into its apportionable[~~business~~] and non-apportionable[~~nonbusiness~~] components, allocates expenses for non-apportionable[~~nonbusiness~~] income, and clarifies that Kentucky follows both the transactional and functional tests. The examples used throughout this administrative regulation are illustrative only and are limited to the facts ***contained within[~~they contain~~]***.

Section 1. Definitions. (1) "Acquisition" means the act of obtaining an interest in property.

(2) "Allocation" means non-apportionable[~~nonbusiness~~] income specifically assigned or allocated to one (1) or more specific jurisdictions.

(3) ***"***Apportionable income" is defined ***by[~~in~~]*** KRS 141.120(1)(a).

(4) "Apportionment" means apportionable[~~business~~] income divided among jurisdictions by use of the[~~three (3)~~] apportionment factor[~~formula~~] provided in KRS 141.120[~~(8).~~

~~(4) "Business income" is defined in KRS 141.120(1)(a)~~].

(5) "Disposition" means the act or the power to relinquish or transfer an interest in or control over property to another, in whole or in part.

(6) ~~"Integral part" means property that constitutes a part of the composite whole of the trade or business, each part of which gives value to every other part, in a manner which materially contributes to the production of business income.~~

~~(7)~~ "Management" means the oversight, direction, or control, directly or by delegation, of the property for the use or benefit of the trade or business.

(7) "Non-apportionable income"[~~(8) "Nonbusiness income"~~] is defined in KRS 141.120(1)(d)[~~(e)~~].

(8) "Trade or business***[~~,~~]***" as used in the definition of apportionable income and in the application of that definition means the unitary business of the taxpayer, part of which is

conducted within Kentucky.

Section 2. Determination of Apportionable[~~Business~~] Income. In determining whether income is apportionable[~~business~~] income, the Department of Revenue shall apply both the transactional test and the functional test as established in Sections 3 and 4 of this administrative regulation. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, income derived from accounts receivable, operating income, non-operating income, etc., is of no aid in determining whether income is apportionable or nonapportionable income.

Section 3. Transactional Test. Apportionable income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business[~~Under the transactional test, income shall be considered business income if the income arises from transactions and activities in the regular course of the taxpayer's trade or business~~] in accordance with this section. (1) If the transaction or activity is[~~shall be~~] in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Kentucky, the resulting income of the transaction or activity is apportionable[~~business~~] income for Kentucky. Income may be apportionable[~~business~~] income even though the actual transaction or activity that gives rise to the income does not occur in Kentucky.

(2) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity is[~~shall~~] not [~~be~~]required to***[~~be one that~~]*** frequently ***occur[~~occurs~~]*** in the trade or business.

(a) Most, but not all, frequently occurring transactions or activities will[~~shall~~] be in the regular course of that trade or business and will[~~shall;~~], therefore, satisfy the transactional test.

(b) It is[~~shall be~~] sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are:

1. Customary in the kind of trade or business being conducted; or

2. Within the scope of what that kind of trade or business does.

(c) If a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's [~~mere~~]financial betterment rather than[~~not~~] for the operations of the trade or business, those activities shall not satisfy the transactional test.

(d) The transactional test includes[~~shall include~~]***[~~, but is not limited to~~]***:

1. Income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business; and

2. Income from the sale of property used in the production of apportionable[~~business~~] income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(3) The corporation shall classify income as apportionable[~~business~~] or non-apportionable[~~nonbusiness~~] income on a consistent basis. If the corporation is not consistent, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

Section 4. Functional Test. Apportionable[~~Business~~] income also includes[~~shall include~~] income from tangible and intangible property, including any direct or indirect interest in, control over, or use in the property held directly, beneficially, by contract, or otherwise, that[~~materially~~] contributes to the production of apportionable[~~business~~] income, if the acquisition, management, employment, development, or[~~and~~] disposition of the property is or was related to the operation[~~constitute integral parts~~] of the taxpayer's[~~regular~~] trade or business[~~operations~~]. (1) Under the functional test, apportionable[~~business~~] income shall not be required to be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business.

(a) Except as provided in paragraph (b) of this subsection, it shall be sufficient if the property from which the income is derived is, or was a[~~an integral,~~] functional,[~~or~~] operative component, or related to or used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of apportionable[~~business~~] income of the trade or business, part of which trade or business is or was conducted within this state.

(b) Property that has been converted to an investment purpose[~~nonbusiness use~~] through the passage of a sufficiently lengthy period of time (generally, five (5) years shall be sufficient) or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes, shall be deemed to have lost its character as a business asset.

(c) Property that was related to a[~~an integral~~] part of the trade or business shall not be considered converted to investment purposes merely because it is placed for sale.

1. Example***[~~(i)~~]***: Taxpayer purchases a chain of 100 retail stores for the purpose of merging those store operations with its existing business. Five (5) of the retail stores are redundant under the taxpayer's business plan and are sold six (6) months after acquisition. Even though the five (5) stores were never integrated into the taxpayer's trade or business, the income is apportionable because the property's acquisition was related to the taxpayer's trade or business.

2. Example***[~~(ii)~~]***: Taxpayer is in the business of developing adhesives for industrial and construction uses. In the course of its business, it accidentally creates a weak but non-toxic adhesive and patents the formula, awaiting future applications. Another manufacturer uses the formula to create temporary body tattoos. Taxpayer wins a patent infringement suit against the other manufacturer. The entire damages award, including interest and punitive damages, constitutes apportionable income.

3. Example***[~~(iii)~~]***: Taxpayer is engaged in the oil refining business and maintains a cash reserve for buying and selling oil on the spot market as conditions warrant. The reserve is held in overnight "repurchase agreement" accounts of U.S. treasuries with a local bank. The interest on those amounts is apportionable income because the reserves are necessary for the taxpayer's business operations. Over time, the cash in the reserve account grows to the point that it exceeds any reasonably expected requirement for acquisition of oil or other short-term capital needs and is held pending subsequent business investment opportunities. The interest received on the excess amount is non-apportionable income.

4. Example***[~~(iv)~~]***: A manufacturer decides to sell one (1) of its redundant factories to a real estate developer and transfers the ownership of the factory to a special purpose subsidiary, SaleCo ***as the taxpayer, and[~~(Taxpayer)~~]*** immediately prior to its sale to the real estate developer. The parties elect to treat the sale as a disposition of assets under IRC 338(h)(10), resulting in ***the*** taxpayer recognizing a capital gain on the sale. The capital gain is apportionable income.***[~~Note:~~]*** Although the gain is apportionable, application of the standard apportionment formula in KRS 141.120 may not fairly reflect the taxpayer's business presence in any state, necessitating a resort to equitable apportionment pursuant to KRS 141.120 (12)(a).

(2)(a) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in the full or partial liquidation or the winding-up of any portion of the trade or business, is apportionable[~~shall be business~~] income, if the property is or was related to[~~used in~~] the taxpayer's trade or business operations, unless the property has been converted to investment purposes[~~nonbusiness use~~].

(b) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business[~~operations~~], constitutes[~~shall constitute~~] apportionable[~~business~~] income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(3) Under the functional test, income from intangible property is apportionable[~~shall be business~~] income when[~~if~~] the intangible

property serves[~~shall serve~~] an operational function as opposed to solely an investment function. The intangible property serves an operational function if it is or was held in furtherance of the taxpayer's trade or business as evidenced by the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test shall not be satisfied if the holding of the property is limited to solely an investment function for a period of five (5) years or more.

(4)***(a)*** If the acquisition, management, employment, development, or disposition of the property is or was related to the operation[~~held for furtherance~~] of the taxpayer's trade or business, then income from that property is apportionable[~~may be business~~] income, even though the actual transaction or activity involving that property that gives rise to the income does not occur in Kentucky.

1. Example ***[(i)]***: A manufacturer purchases raw materials to be incorporated into the product it offers for sale. The nature of the raw materials is such that the purchase price is subject to extreme price volatility.***[In order]*** To protect itself from extreme price increases ***[(]***or decreases***[)]***, the manufacturer enters into future contracts pursuant to which the manufacturer ***may[can]*** either purchase a set amount of the raw materials for a fixed price, within a specified time period, or resell the future contracts. Any gain on the sale of the future contracts would be considered apportionable income, regardless of whether the contracts were either made or resold in Kentucky.

2. Example***[(ii)]***: A national retailer produces substantial revenue related to the operation of its trade or business. It invests a large portion of the revenue in fixed income securities which are divided into three (3) categories***:***

a.[***; (a)]*** Short-term securities held pending use of the funds in the taxpayer's trade or business;

b.[(b)] Short-term securities held pending acquisition of other companies or favorable developments in the long-term money market***;[,]*** and

c.[(c)] Long- term securities held as an investment.

(b) Interest income on the short-term securities held pending use of the funds in the taxpayer's trade or business ***pursuant to clause a. of subsection 4(a)2. of this section[(a)]*** is apportionable because the funds represent working capital necessary to the operations of the taxpayer's trade or business.

(c) Interest income derived from the other investment securities ***pursuant to clause b. and c. of subsection 4(a)2. of this section[((b) and (c))]*** is not apportionable as those securities were not held in furtherance of the taxpayer's trade or business.

(5)(a) An item of property shall be presumed to be related[~~integral~~] to the taxpayer's trade or business operations if the taxpayer:

1. Takes a deduction from[~~business~~] income that is apportioned to Kentucky; or

2. Includes the original cost in the property factor, if applicable.

(b) No[~~A~~] presumption arises[~~shall not arise~~] from the absence of an action described in paragraph (a) of this subsection.

(6) Application of the functional test is generally[~~shall be~~] unaffected by the form of the property (e.g., tangible or intangible property, real or personal property).

(a) Income arising from an intangible interest as, for example, corporate stock or other intangible interest in an entity[~~a business~~] or a group of assets, is apportionable[~~shall be business~~] income when[~~if~~] the intangible itself or the property underlying or associated with the intangible is or was related to the operation of[~~an integral, functional, or operative component to~~] the taxpayer's trade or business[~~operations~~].

(b) While apportionment of income derived from transactions involving intangible property[~~as business income~~] may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, establishment of a[~~similar~~] relationship is not[~~shall not be~~] the exclusive basis for concluding that the income is subject to apportionment. It is[~~shall be~~] sufficient to support the finding of apportionable[~~apportioned~~] income if the holding of the intangible interest served[~~as~~] an operational rather than an investment function[~~asset~~].

Section 5. Examples of Apportionable and Non-apportionable Income. (1) Rents from real and tangible personal property. Rental income from real and tangible property is apportionable income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business.

(a) Example***[(i)]***: The taxpayer operates a multistate car rental business. The income from car rentals is apportionable income.

(b) Example***[(ii)]***: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is apportionable income.

(c) Example***[(iii)]***: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five (5)-story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two (2) floors are held for future use in the trade or business and are leased to tenants on a ***short[sort]***-term basis in the meantime. The rental income is apportionable income.

(d) Example***[(iv)]***: The taxpayer operates a multistate chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not apportionable income of the grocery store trade or business. Therefore, the net rental income is non-apportionable income.

(e) Example***[(v)]***: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a twenty (20)-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining eighteen (18) floors are leased to others. The rental of the eighteen (18) floors is not done in furtherance of***,*** but rather is separate from***,*** the operation of the taxpayer's trade or business. The net rental income is not apportionable income of the clothing store trade or business. Therefore, the net rental income is non-apportionable income.

(f) Example***[(vi)]***: The taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold eighteen (18) months later. The rental income is apportionable income and the gain on the sale of the plant is apportionable income.

(2) Gains or losses from sales of assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property constitutes apportionable income if the property while owned by the taxpayer was related to the operation of the taxpayer's trade or business.

(a) Example***[(i)]***: In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the trade or business. The gains or losses resulting from those sales constitute apportionable income.

(b) Example***[(ii)]***: The taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later sold the property at a gain while it was in operation by the taxpayer. The gain is apportionable income.

(c) Example***[(iii)]***: Same as ***paragraph (b) of this subsection, [(ii)]*** except that the plant was closed and put up for sale but was not in fact sold until a buyer was found eighteen (18) months later. The gain is apportionable income.

(d) Example***[(iv)]***: Same as ***paragraph (b) of this subsection,[(ii)]*** except that the plant was rented while being held for sale. The rental income is apportionable income and the gain on the sale of the plant is apportionable income.

(3) Interest. Interest income is apportionable income where the intangible with respect to which the interest was received arose out of or was created in the regular course of the taxpayer's trade or business, or the purpose of acquiring and holding the intangible is related to the operation of the taxpayer's trade or business.

(a) Example***[(i)]***: The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges,

interest, or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are apportionable income.

(b) Example***[(ii)]***: The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund pertaining to the taxpayer's trade or business and collects a judgment against a debtor of the business. Both the tax refund and the judgment bear interest. The interest income is apportionable income.

(c) Example***[(iii)]***: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover***[such]*** items ***such*** as workmen's compensation claims, rain and storm damage, machinery replacement, etc. The funds in those accounts earned interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state, and local tax obligations pertaining to the taxpayer's trade or business. The interest income is apportionable income.

(d) Example***[(iv)]***: The taxpayer is engaged in a multistate money order and traveler's check business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is apportionable income.

(e) Example***[(v)]***: The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling $200,000 which it regularly invests in short-term interest bearing securities. The interest income is apportionable income.

(f) Example***[(vi)]***: In January, the taxpayer sold all of the stock of a subsidiary for $20,000,000. The funds are placed in an interest-bearing account pending a decision by management as to how the funds are to be utilized. The funds are not pledged for use in the business. The interest income for the entire period between the receipt of the funds and their subsequent utilization or distribution to shareholders is non-apportionable income.

(4) Patent and copyright royalties. Patent and copyright royalties are apportionable income where the patent or copyright with respect to which the royalties were received arose out of or was created in the regular course of the taxpayer's trade or business, or where the acquiring and holding the patent or copyright is or was related to the operation of the taxpayer's trade or business, or contributes to the production of apportionable income of the trade or business.

(a) Example***[(i)]***: The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business, the taxpayer obtained patents on certain ***kinds*** of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are apportionable income.

(b) Example***[(ii)]***: The taxpayer is engaged in the music publishing trade or business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are thereafter used by the taxpayer in its trade or business. Any royalties received on these copyrights are apportionable income.

Section 6. Relationship of Transactional and Functional Tests to the U.S. Constitution. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict ***states[sates]*** from apportioning income that has no rational relationship with the taxing state. Satisfaction of either the transactional test or the functional test complies[shall comply] with this constitutional requirement, because each test requires[shall require] that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) be tied to the same trade or business that is being conducted within this state.

[Section 6. For taxable years beginning after December 31, 2004, corporations defined in KRS 141.010(24)(a) to (h), limited liability entities, limited partnerships, and S corporations, shall include as part of their calculation of taxable income, separately stated items of distributive share income. The separately-stated items of distributive share income shall be deemed business income if the items meet the transactional test, functional test, or a holding period of less than five (5) years in the case of an investment.]

Section 7. Expenses Related to Non-apportionable[Nonbusiness] or Nontaxable Income. (1) KRS ***141.039(2)(c)[141.039010(213)(cd)]*** [141.010(13)(d)] requires that any deduction allowed under Chapter 1 of the Internal Revenue Code shall be reduced by expenses directly or indirectly related to nontaxable or non-apportionable[nonbusiness] income. If actual expenses, including interest, salaries, general and administrative, and other stewardship expenses, is not related directly to the income, one (1) of the following formulas shall be used:

(a) Ratio of non-apportionable[nonbusiness]***and[/]***nontaxable assets to total assets times interest expense. Interest expense shall represent all expenses incurred in the stewardship or maintenance of non-apportionable[nonbusiness] or nontaxable assets. Other expenses may be used which more fairly reflect expenses attributable to the income or assets producing the non-apportionable[nonbusiness]***and[/]***nontaxable income. Assets shall be valued at cost, and the investment account shall exclude equity;

(b)[If the total nonbusiness/nontaxable income does not exceed fifty (50) percent of the total gross receipts, the expenses not deductible under paragraph (a) of this subsection may be reduced proportionately but not to exceed fifty (50) percent of the calculated expenses;

(c) 1.75 percent of the cost of assets producing nonbusiness/nontaxable income;

(d)]Ratio of non-apportionable[nonbusiness] ***and[/]***nontaxable income to total gross receipts times interest expense, officers' salaries, and general administrative expenses. The sum of these or any reasonable combination of these expenses; or

(c)[(e)] A flat percentage, one (1) percent to 100 percent, of non-apportionable[nonbusiness] ***and[/]***nontaxable income. The percentage used shall be reasonable and reflect the expenses attributable to the stewardship or maintenance of the assets producing the income.

(2) KRS 141.039(2)(c)[141.010(13)(d)] requires a corporation to relate expenses to non-apportionable[nonbusiness] and nontaxable income. The formulas listed in subsection (1)(a) to ***(c)[(e)]*** of this section for determining related expenses shall be used by the corporation or assist the corporation in developing a method more suitable to its particular situation.

Section 8. Proration of Deductions. Any allowable deduction that applies to both apportionable[business] and non-apportionable [nonbusiness] income or to more than one (1) trade or business shall be prorated to those classes of income or trades or businesses by the formulas listed in Section 7***[6]*** of this administrative regulation.

Section 9. [Revenue Policy 41P150 "Expenses Related to Nonbusiness Nontaxable Income", shall be withdrawn, since the policy has been incorporated into this administrative regulation.

Section 10.]The amendments to this administrative regulation shall apply to tax periods beginning on or after January 1, 2018[2005].

DANIEL BORK, Commissioner

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 11, 2018)

103 KAR 16:090. Apportionment; payroll factor.

RELATES TO: KRS 141.010, 141.120***(12)(a)2.***, 141.121***, 141.901***

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 141.018***, 141.121, 141.901***

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 141.121 and 141.901 require[All]***[~~KRS 141.120(8) requires that all~~] business or apportionable income of multi-state corporations ***to[shall]*** be apportioned to Kentucky by multiplying the income by a fraction[~~, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4)~~]. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation provides a detailed explanation of the payroll apportionment factor.

Section 1. Compensation. (1)(a) Compensation shall not include payments to an independent contractor or any other person not properly classifiable as an employee.

(b) Only amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly shall include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the corporation in return for personal services, if the amounts constitute income to the recipient under KRS ***141.900(12) and (13)[141.039]***[~~141.010(12) and (13)~~].

(2)(a) The total amount paid or payable for compensation during the taxable year shall be determined by the corporation's accounting method and shall be the same method used by the corporation for federal taxation purposes. If the corporation has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid.

(b) The corporation shall be consistent in the treatment of compensation paid in filing returns or reports to all states. If the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

(3) Compensation paid to employees whose services are performed entirely in a state where the corporation is exempt from taxation, for example, by Pub. L. 86-272, codified as 15 U.S.C. §§ 381 to 384, shall be included in the denominator of the payroll factor.

(4) An individual shall be considered an employee if the individual is included by the corporation as an employee for purposes of the payroll taxes imposed by 26 U.S.C. 3121(d). Independent contractors shall not be considered employees.

Section 2. Payroll Factor-Numerator. (1) The total wages reported by the corporation to Kentucky for unemployment compensation purposes, except for compensation excluded by this administrative regulation, shall be considered as a factor in determining if an employee's compensation is properly reportable to Kentucky.

(2) In determining if a service performed without Kentucky is incidental to the employee's service in Kentucky, a service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction, shall be considered an incidental service.

(3) In determining where the employee's base of operations is located, the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the corporation or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of the employee's trade or profession at some other point or points, shall be considered to be the base of operations.

(4) The place from which the power to direct or control is exercised by the corporation shall be the place from which the service is directed or controlled.

Section 3. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

DANIEL BORK, Commissioner
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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 11, 2018)

103 KAR 16:230. Intangible expenses, intangible interest expense, and management fees.

RELATES TO: KRS 131.130, 141.205

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.205 disallows intangible expenses, intangible interest expenses and management fees when those expenses and fees are directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one (1) or more direct or indirect transactions with one (1) or more related members or with a foreign corporation, unless certain criteria are met. This administrative regulation establishes the requirements for when these expenses and fees are allowed or disallowed.

Section 1. Definitions.

(1) "Actual comparables" means transactions between the recipient and unrelated parties that are identical to the subject transaction.

(2) ***"Arm's length transaction" means a freely negotiated transaction between unrelated parties as provided in 26 C.F.R. 1.482-1.***

(3)"Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States, and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation or the withholding of tax on interest, dividends, and royalties, in order to prevent double taxation of the respective nations' residents, and to promote the sharing of information.

(4)[(3)] "Measured by, in whole or in part, net income" means that the receipt of the payment by the recipient is reported and included in income for purposes of a tax on net income or in the franchise for purposes of the franchise tax.

(5)[(4)] "Reported and included in income for purposes of a tax on net income or in the franchise," means:

(a) For a tax on net income, reported and included in the net income apportioned or allocated to the taxing jurisdiction; or

(b) For a franchise tax, reported and included in the franchise apportioned or allocated to the taxing jurisdiction.

(6)[(5)] "Subject transaction" means the transaction giving rise to the intangible expense, intangible interest expense, or management fee.

Section 2. Disclosure; General. As part of the required disclosure, the entity shall provide a description of the nature of the payment made to the recipient. This description shall contain:

(1) For intangible expenses or intangible interest expenses:

(a) A narrative regarding the subject transaction;

(b) The extent of the rights being transferred, for example, if a patent is being licensed:

1. Whether that license is exclusive or non-exclusive; and

2. Whether the transferee has any rights to sublicense;

(c) How the amount of the payment is calculated; and

(d) If there is a document that sets forth the terms of the subject transaction, a copy of that document; and

(2) For management fees:

(a) A narrative of the services being performed for the entity by the recipient;

(b) How the amount of the payment is calculated; and

(c) If there is a document that sets forth the terms of the transaction, a copy of that document.

Section 3. Disclosure; Arm's Length Transaction. An entity may be required to establish that the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction.

(1) If there are actual comparables, the actual comparables shall be used.

(2) If there are no actual comparables, the two (2) primary factors to take into account if determining whether the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction shall be:

(a) The degree of comparability between the subject transaction and the proposed comparable transactions; and

(b) The quality of the data and assumptions used in the analysis.

Section 4. Disclosure; Intangible Expense, Intangible Interest Expense, or Management Fee. With respect to an intangible expense, intangible interest expense, or management fee, the entity shall make additional disclosures if it cannot utilize any of the other methods to establish that it is entitled to the deduction. The entity shall show that the payment made to the recipient was subject to, in its state or country of commercial domicile, a net income tax, or a franchise tax, measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States.

Section 5. Corporation or Pass-Through Entity. A corporation or pass-through entity that during the taxable year directly or indirectly paid, accrued, or incurred intangible expenses, intangible interest expenses, or management fees to a related member or foreign corporation shall attach to its tax return filed with the department:

(1) Schedule RPC, Revenue Form 41A720RPC; and[~~(Form number 41A720RPC), incorporated by reference in 103 KAR 3:040; and~~]

(2) Any additional disclosures required by Sections 2, 3, and 4 of this administrative regulation.

Section 6. The disclosures related to management fees and the provisions of Section 5 of this administrative regulation shall apply to taxable years beginning on or after January 1, 2014.

Section 7. The forms and materials prescribed herein may be inspected, copied, or obtained, subject to applicable copyright law, from 8:00 a.m. to 4:30 p.m. at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601; at any Kentucky Department of Revenue Taxpayer Service Center during normal operating hours; and on the department's Web site at http:\\revenue.ky.gov.

DANIEL BORK, Commissioner

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 11, 2018)

103 KAR 16:240. Nexus standard for corporations and pass-through entities.

RELATES TO: KRS 141.010, 141.040, 141.206

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050[~~(4)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.040(1) requires non-exempt corporations doing business in Kentucky to pay corporation income tax and file the required tax forms for that tax. KRS 141.206 requires pass-through entities doing business in Kentucky to file tax forms to compute the distribution of income to the partners, members or shareholders. KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky's tax laws. KRS 141.018 requires the Department of Revenue to promulgate administrative regulations necessary to implement ***2005 Ky. Acts ch. 168 and 2006 Extra. Sess. Ky. Acts ch. 2[~~the provisions of HB 272 from the 2005 regular session and HB 1 from the 2006 extraordinary session of the Kentucky General Assembly~~]***.[~~2005 Ky. Acts ch. 168. KRS 141.010(25) defines "doing business in this state".~~] This administrative regulation establishes what constitutes nexus in Kentucky under a "doing business" standard and provides examples.

Section 1. Definitions.

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

(a) The corporation's or pass-through entity's commercial domicile;

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

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

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

(3) "Corporation" is defined by KRS 141.010(4)[~~141.010(24)~~].

(4) "Doing business in this state" is defined by KRS 141.010(7)[~~141.010(25)~~].

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

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

(7) "Pass-through entity" is defined by KRS 141.010(21) [~~141.010(26)~~].

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

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

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

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

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

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

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

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

Section 2. In General; Rules of Construction.

(1) For purposes of the corporation income tax imposed by KRS 141.040(1) and the filing requirement imposed on pass-through entities by KRS 141.206(1)[~~141.206(2)~~], the term "doing business in this state" or "doing business" shall be used in a comprehensive sense concerning the operation of any profit-

seeking enterprise or activity in Kentucky.

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

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

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

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

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

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

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

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

(5) Pub. L. 86-272***, codified as 15 U.S.C. 381 to 384,*** does not afford immunity from the limited liability entity tax imposed by KRS 141.0401.

Section 3. Exception for Solicitation Activities Protected by Pub. L. 86-272, codified as 15 U.S.C. 381 to 384.

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

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

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

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

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

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

1. Sale or provision of services; or

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

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

(a) Soliciting orders through advertising;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Investigating credit;

(e) Repossessing property;

(f) Conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

(g) Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints if the sole purpose of the mediation is to ingratiate the sales personnel with the customer;

(h) Approving or accepting orders;

(i) Securing deposits on sales;

(j) Picking up or replacing damaged or returned property, including stale or unsaleable property;

(k) Maintaining a sample or display area for an aggregate of fifteen (15) days or more at any one ***(1)*** location within Kentucky during the tax year;

(l) Providing technical assistance or service, including engineering assistance or design service, if one (1) of the purposes of it is other than the facilitation of the solicitation of orders;

(m) Hiring, training, or supervising personnel for activities other

than solicitation;

(n) Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

(o) Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;

(p) Providing shipping information and coordinating deliveries;

(q) Supervising the operations of a franchisee or similar party;

(r) Monitoring, inspecting, or approving work performed by an independent contractor under a warranty or similar contractual arrangement;

(s) Consigning stock of goods or other tangible personal property for sale to any person, including an independent contractor;

(t) Fulfilling sales orders by shipment or delivery from a point within Kentucky;

(u) Owning, leasing, maintaining, or otherwise using as part of the business operations in Kentucky any of the following facilities or property:

1. Repair shop;

2. Parts department;

3. Warehouse;

4. Meeting place for directors, officers, or employees;

5. Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation; or

6. Telephone answering service that is publicly attributed to the company or to an employee or agent of the company in their representative status;

(v) Maintaining, by any employee or other representative, an office or place of business of any kind other than an in-home office. For the purpose of this subsection, it shall not be relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office. An office shall be considered in-home if it is located within the residence of the employee or representative, and:

1. Is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity. Factors considered in determining if an office is publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity shall include:

a. A telephone listing or other public listing within the state for the company, or for an employee or representative of the company in that capacity, or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state;

b. The normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers, and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative; or

c. The maintenance of any office or other place of business in this state that does not strictly qualify as an "in-home" office as described in this paragraph shall, by itself, cause the loss of protection under this subsection;

2. The use of the office is limited to:

a. Soliciting and receiving orders from customers;

b. Transmitting orders outside the state for acceptance or rejection by the company; or

c. Other activities that are protected under Pub. L. 86-272, codified as 15 U.S.C.A. 381 to 384 or under this administrative regulation;

(w) Entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or selling or otherwise transferring tangible personal property pursuant to the franchise or license by the franchisor or licensor to its franchisee or licensee within the state; or

(x) Conducting any other activity, which is not entirely ancillary to the solicitation of orders, even if the activity helps to increase purchases.

Section 4. "Doing Business". An analysis to determine if a corporation or pass-through entity's activities fall within the provisions of KRS 141.010(7)[~~141.010(25)~~] shall include the factors established in this section. (1) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(7)(f) [~~141.010(25)(f)~~]:

(a) Performing services in Kentucky, whether directly by the corporation or pass-through entity or indirectly by directing activity performed by a third party;

(b) Accepting orders in Kentucky;

(c) Operating a professional sports team, which engages in professional sports activities in Kentucky;

(d) Owning an interest in mineral rights in Kentucky, including interests in coal, oil, or natural gas;

(e) Leasing motion picture films to movie theaters and television stations in Kentucky;

(f) Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;

(g) Being a member, partner, or shareholder in a pass-through entity doing business in Kentucky; or

(h) Receiving income from intangible personal property if the intangible personal property has acquired a Kentucky business situs.

(2) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(7)(g)[~~141.010(25)(g)~~]:

(a) Performing or soliciting orders for services in Kentucky, including those services performed in Kentucky by a third party on behalf of a corporation or pass-through entity;

(b) Selling or soliciting orders for real property;

(c) Selling or soliciting orders for intangible personal property;

(d) Selling tangible personal property; or

(e) Delivering merchandise inventory on consignment to its Kentucky distributors or dealers.

(3) A corporation or pass-through entity may be considered doing business under KRS 141.010(7)(d)[~~141.010(25)(d)~~] without having employees in Kentucky. If activities are performed in Kentucky by a third party on behalf of the corporation or pass-through entity, the corporation or pass-through entity shall be considered doing business in Kentucky.

(4)(a) General.

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

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

3. Mere ownership of a corporation that is doing business in Kentucky shall not subject the owner to the requirements. However, based on additional facts and circumstances, sufficient contacts with Kentucky may exist to establish that the corporation or pass-through entity is doing business in Kentucky. The activities listed in this subparagraph shall serve as examples of facts and circumstances that establish that the corporation or pass-through entity is doing business in Kentucky:

a. Being the parent corporation of a qualified real estate investment trust subsidiary that is doing business in Kentucky;

b. Being the parent corporation of a qualified subchapter s subsidiary that is doing business in Kentucky;

c. Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;

d. Being a related corporation doing business in Kentucky, which is performing activities as the corporation's or pass-through entity's agent in Kentucky;

e. Receiving income from a contract between a corporation or pass-through entity and a related corporation doing business in Kentucky if the income is derived from the related corporation's activities in Kentucky;

f. Being a corporation that is essentially a shell corporation, or other facts indicate that an independent corporate existence is essentially disregarded; or

g. Entering into franchising or licensing agreements and receiving income from franchising or licensing agreements that have acquired a Kentucky business situs.

(b) Employee or independent agent activity. A foreign corporation or pass-through entity that is not otherwise doing business in Kentucky may be considered to not be doing business in Kentucky, even if its employees or independent agents are performing certain de minimis activities in Kentucky. The following items shall serve as examples of de minimis activities:

1. A foreign corporation or pass-through entity sending various employees, e.g., legal staff and witnesses, to assist its independent legal counsel in defending a lawsuit in Kentucky. The law firm providing counsel shall be taxable in Kentucky;

2. A foreign corporation or pass-through entity sending its employees to Kentucky to purchase raw materials and inventory;

3. A foreign corporation or pass-through entity giving its highest performing sales person an expense paid vacation to Lake Barkley, Kentucky; or

4. A foreign corporation or pass-through entity sending its business records to Kentucky for use by its independent auditors.

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

DANIEL BORK, Commissioner

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 11, 2018)

103 KAR 16:290. Apportionment; property factor.

RELATES TO: KRS 141.120***(12)(a)2.***, 141.121***, 141.901***

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 141.120***(12)(a)2., 141.121, 141.901***[~~(10)(b)~~]

[~~EFFECTIVE: February 10, 2006~~]

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 141.121 and 141.901 require[All]***[~~KRS 141.120(8) requires that all~~] business or apportionable income of multistate corporations ***to*** be apportioned to Kentucky by multiplying the income by a fraction[~~, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). KRS 141.120(10)(b) requires the cabinet to promulgate administrative regulations providing how to determine the property factor used in the multi-state business income apportionment formula~~]KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for determining the property factor of a multistate corporation.

Section 1. Definitions.

(1) "Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the corporation for its benefit for the use of the property;

(a) Including:

1. Any amount payable for the use of real or tangible personal property whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise; and

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement; and

(b) Not including:

1. Amounts paid as service charges, such as utilities or janitorial services; and

2. Incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles.

(2) "Net annual rental rate" means the total annual rental paid, less total annual rental received from subrentals, which shall:

(a) Be subtracted if they constitute nonbusiness or non-apportionable income; and

(b) Not be subtracted if they constitute business or apportionable income because the property which produces the subrentals is used in the regular course of a trade or business of the taxpayer when it is producing business or apportionable income.

(3) "Original cost" means the basis of the property for federal income tax purposes, prior to any federal adjustments, at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, or abandonment.

Section 2. General. The property factor shall include all real and tangible personal property owned or rented and used during the taxable year, except coin, and currency[~~, and pollution control property located in Kentucky for which a tax exemption certificate is issued by the Department of Revenue~~].

Section 3. Property Used.

(1) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the taxable year. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed shall be included in the factor.

(2) Inventory in process shall be included in the factor. Property or equipment under construction during the taxable year shall be excluded from the factor until it is actually used or is available for or capable of being used during the taxable year.

(3) Property used shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale.

Section 4. Consistency in Reporting. (1) Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) State-to-state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the valuation of property and in the exclusion of property from or the inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Section 5. Property Factor: Numerator.

(1) Property in transit between a buyer and seller shall be included in the numerator according to the state of destination. Property in transit between locations of the same corporation shall be considered at the destination location for purposes of the property factor.

(2) The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which is located within and without Kentucky during the taxable year shall be determined, for purposes of the numerator of the factor, on the basis of total time within the state during the taxable year. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 6. Valuation of Owned Property.

(1) Property owned by the corporation shall be valued at original cost.

(2) Capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been

expensed for either federal or state purposes.

(3) If the original cost of property is not ascertainable, is nominal, or is zero, the property shall be included in the factor at its fair market value at the date of acquisition by the corporation.

(4) Inventory shall be included in the factor by the valuation method used for federal income tax purposes.

(5) Property acquired by gift or inheritance shall be included in the factor at its basis for depreciation for federal income tax purposes.

Section 7. Rented Property.

(1) Annual rental rate shall be determined as follows:

(a) If the property is rented for a twelve (12) month period, the annual ***rental payment[~~rent~~]***;

(b) If the property is rented for less than a twelve (12) month period, the net rent paid for the actual period of rental; or

(c) If the property is rented for a period of twelve (12) or more months, and the current tax period covers a period of less than twelve (12) months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized.

(2)(a) Property rented by a corporation shall be valued at eight (8) times the net annual rental rate.

(b) If this calculation results in a negative value or a clearly inaccurate valuation, any other method which will properly reflect the value may be required by the department or may be requested by the corporation, except the net annual rental rate shall not be less than the total annual rental rate multiplied by a fraction, the numerator of which is the fair market value of rent applicable to rental property used by the corporation divided by the fair market value of rent applicable to all of the corporation's rental property.

(c) If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) If property is used at no charge or rented for a nominal rate, the property shall be included in the property factor on the basis of the fair market value of rent for comparable property in the area.

(4) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the corporation regardless of whether the corporation is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of a leasehold improvement shall be included in the factor.

Section 8. Monthly Averaging of Property. Averaging by monthly values shall apply if:

(1) Fluctuations in the values of the property exist during the tax period;

(2) Property is acquired after the beginning of the tax period or disposed of before the end of the tax period; or

(3) Fluctuations in the percentage of property used in Kentucky exist during the tax period.

Section 9. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

DANIEL BORK, Commissioner

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 11, 2018)

103 KAR 16:330. Apportionment and allocation; alternative apportionment; separate accounting.

RELATES TO: KRS 141.120, 141.901[~~.~~]

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 141.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 141.120(12)(a)(1)[~~141.120(9)(a)(1)~~] states that if the allocation and apportionment provisions do not fairly represent the extent of the taxpayer's[~~corporation's~~] business activity in Kentucky, a taxpayer[~~corporation~~] may petition for, or the department[~~of Revenue~~] may require, in respect to all or any part of the taxpayer's[~~corporation's~~] business activity, if reasonable, an alternative method of apportionment[~~separate accounting~~]. KRS 131.130(1) authorizes the Kentucky Department of Revenue[~~department~~] to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation ***establishes[~~explains~~]*** alternative apportionment request procedures and when the separate accounting method shall apply.

Section 1. Petition for Alternative Apportionment.

(1) Before a taxpayer may file a return with an alternative method of allocation or apportionment pursuant to KRS 141.120(12), a taxpayer shall file a petition for the use of alternative apportionment with the department, and the petition shall have been approved or denied by the department. If the taxpayer chooses to be represented by a person or firm outside of its business entity, Form 20A100, Kentucky Declaration of Representative, shall be submitted to the department naming the taxpayer's representative(s). Form 20A100, as prescribed by the department, may be found online at https://revenue.ky.gov.

(2) All petitions shall be in written form and submitted to the attention of the Commissioner of the Department of Revenue. A petition submitted as an attachment to a return shall not be considered a valid petition. If the department processes a return which uses an unapproved alternative apportionment method, the action shall not be construed as the department's acceptance of the taxpayer's proposed alternative method.

(3) The department shall notify the taxpayer, in writing, if the requested alternative method has been approved. If approved, the taxpayer may then file an amended or original return utilizing the approved alternative ***apportionment*** method.

Section 2. Denial of Petition for Alternative Apportionment. If a taxpayer disagrees with the department's denial of a petition for alternative apportionment***:***

(1)[~~,~~] The taxpayer can pay the tax that is due pursuant to the department's interpretation and seek a refund which, if denied, can be protested; or

(2) The taxpayer may[~~they can~~] file a return with the denied alternative apportionment method, which will result in an assessment being issued that can then be protested pursuant to KRS 131.110 and 103 KAR 1:010.[~~General. (1) A corporation may apply for an alternative apportionment method using separate accounting, or the Department of Revenue may require separate accounting, if the corporation or Department of Revenue establishes either that the business income subject to apportionment, or one (1) or more of the factors, does not fairly represent the activity of the [corporation's business activities in Kentucky.~~

~~(2) The fact that taxable income is greater or lesser, or that the corporation's accounting records reflect income by contracts or by states shall not be sufficient to support a request for separate accounting.~~]

Section 3[~~2~~]. Separate Accounting. If a taxpayer[~~corporation~~] is permitted or required to use the separate accounting method of apportionment, the authorization or requirement shall be applied prospectively from the date or taxable year it was directed in writing by the department[~~of Revenue~~] or requested by the taxpayer[~~corporation~~]. Income tax returns filed under these conditions shall be subject to audit and review on a separate accounting basis to determine the correctness of income and expenses, but the method of apportioning net income shall not be changed retroactively. The fact that taxable income is greater or lesser, or that the taxpayer's accounting records reflect income by

contracts or by states shall not be sufficient to support a request for separate accounting.

Section 4. This administrative regulation shall apply to taxable years beginning on or after January 1, 2018.

DANIEL BORK, Commissioner
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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 11, 2018)

103 KAR 16:340.*Completed*[~~Apportionment and allocation; completed~~]*[Completed]* contract method.

RELATES TO: KRS 141.120[~~,~~]
STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 141.120
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and interpret Kentucky's tax laws. This administrative regulation explains how the apportionable[~~business~~] income ***allocation and*** apportionment factors shall be calculated when net income is reported on a completed contract basis.

Section 1. Definitions. (1) "Completed contract method of accounting" means a method of accounting whereby apportionable[~~business~~] income from long-term contracts is reported for the taxable year in which the contract is finally completed and accepted.

(2) ***"Gross contract price" means the percentage of the entire contract that has been completed, from the commencement of the contract to the date of withdrawal, dissolution, or cessation of business.***

(3) "Long-term contracts" means contracts covering a period in excess of one (1) year from the date of execution of the contract to the date on which the contract is finally completed and accepted.

Section 2. General. If a corporation uses the completed contract method of accounting, the apportionable[~~business~~] income earned within Kentucky shall be determined by[~~a weighted fraction, the numerator of which is the weighted sales factor fifty (50) percent, plus the weighted property factor twenty-five (25) percent plus the weighted payroll factor twenty-five (25) percent, and the denominator of which is four (4),~~] the use of the apportionment factor determined pursuant to KRS 141.120, as modified by the***[~~following~~]*** special rules for apportionable[~~business~~] income derived from long term contracts established in Sections 3 to 5[~~7~~]of this administrative regulation.

Section 3. Sales Factor. The numerator and denominator of the sales factor shall be determined pursuant to KRS 141.120(9)[~~141.120(8)(c)~~] and the following special rules:

(1) Gross receipts derived from the performance of a contract shall be attributable to Kentucky if the construction project is located in Kentucky. If the construction project is located partly within and partly without Kentucky, the gross receipts attributable to Kentucky shall be based upon the ratio which construction costs for the project in Kentucky incurred during the taxable year bear to the total of construction costs for the entire project during the taxable year.

(2) The sales factor shall include the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the taxable year attributable to each contract.

Section 4.[~~Property Factor. The numerator and denominator of the property factor shall be determined pursuant to KRS 141.120(8)(a) and the following special rules:~~

~~(1) The average value of the corporation's cost (including materials and labor) of construction in progress, to the extent that the costs exceed progress billing (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts), shall be included in the denominator of the property factor.~~

~~(2) The value of any construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.~~

~~(3) Rent paid for the use of equipment directly attributable to a particular construction project shall be included in the property factor at eight (8) times the net annual rental rate even though the rental expense may be capitalized into the cost of construction.~~

~~Section 5. Payroll Factor. The numerator and denominator of the payroll factor shall be determined pursuant to KRS 141.120(8)(b) and the following special rules:~~

~~(1) Compensation paid employees which is attributable to a particular construction project shall be included in the payroll factor even though capitalized into the cost of construction.~~

~~(2) Compensation paid employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall be attributable to the state in which the services are performed.~~

~~Section 6.~~](1) The completed contract method of accounting shall require that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted.

(2) Accordingly, a separate computation shall be made for each contract completed during the taxable year, regardless of whether the project is located within or without Kentucky, to determine the amount of income, which is attributable to sources within Kentucky.

(3) The amount of income from each contract completed during the taxable year apportioned to this state, plus other apportionable[~~business~~] income apportioned to this state[~~by the regular three (3) factor formula~~] such as interest income, rents, royalties, income from short-term contracts, etc., plus all non-apportionable[~~nonbusiness~~] income allocated to Kentucky, shall be the measure of tax for the taxable year.

(4) The amount of income (or loss) from each contract which is derived from sources within Kentucky using the completed contract method of accounting shall be computed as follows:

(a) ***The amount of***[~~***In the taxable year in which the contract is completed, the***~~***]*** income (or loss)***[therefrom]*** shall be determined ***in the taxable year in which the contract is completed***.

(b) The income (or loss) determined by paragraph (a) of this subsection shall be apportioned to Kentucky by the following method:

1. A fraction shall be determined for each year during which the contract was in progress. The numerator shall be the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator shall be the total of all construction costs for the project.

2.[~~Each percentage determined by subparagraph 1 of this paragraph shall be multiplied by the apportionment formula percentage for that particular year as determined in Section 2 of this administrative regulation.~~

~~3. The percentages determined by subparagraph 2 of this paragraph for each year during which the contract was in progress shall be totaled.~~] The amount of total income (or loss) from the contract determined under paragraph (a) of this subsection shall be multiplied by the total percentage determined by subparagraph 1 of this ***paragraph***[~~***subsection***~~***]***. The resulting income (or loss) shall be the amount of apportionable[~~business~~] income from the contract derived from sources within Kentucky.

Section 5[~~7~~]. Computation for Year of Withdrawal, Dissolution

or Cessation of Business. (1) Use of the completed contract method of accounting shall require that income derived from sources within Kentucky from incomplete contracts in progress outside Kentucky on the date of withdrawal, dissolution, or cessation of business in Kentucky be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves, or ceases doing business in this state.

(2) The amount of income (or loss) from each contract to be apportioned to Kentucky by the apportionment method established in Section ***4[6]***(4)(b) of this administrative regulation ***[~~of this administrative regulation~~]*** shall be determined as follows:

(a) The amount of ***apportionable[~~business~~]*** income (or loss) for each contract shall be the amount by which the gross contract price from each contract ***[~~which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution, or cessation of business~~]*** exceeds all expenditures made during the period in connection with each contract.

(b) In so doing, account shall be taken of the material and supplies on hand at the beginning and end of the taxable year for use in each contract.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 3 p.m.

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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, December 11, 2018)

103 KAR 19:010. Computation of income; estates and trusts.

RELATES TO: KRS 141.010, 141.019, 141.020, 141.030, 141.081, 141.190[~~, 141.020~~]***, 141.900***

STATUTORY AUTHORITY: KRS 131.130[~~Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue to promulgate administrative regulations to prescribe tax return filing requirements for fiduciaries including estates and trusts. This administrative regulation outlines procedure for computing estate and trust income for Kentucky income tax purposes including instructions covering both resident and nonresident situations.

Section 1.***[~~General. All provisions of KRS Chapter 141 (and related administrative regulations) that apply to individuals shall also apply to fiduciaries and returns filed by fiduciaries, except when such provisions conflict with provisions dealing specifically with fiduciaries.~~***

~~Section 2.~~] Computation of Income. Taxable income of an estate or trust is net income as defined ***by[~~in~~]*** KRS 141.019[~~141.010(11)~~] except:

(1) The standard deduction permitted individuals in KRS 141.081[~~141.080~~] is not allowed;

(2) Federal estate tax paid on income accrued at the date of death of a decedent is deductible;

(3) Deductions that have been allowed on the Kentucky inheritance tax return or the Kentucky individual income tax return ***may not[~~cannot~~]*** be claimed on the fiduciary income tax return; and

(4) Any deductions (or federal tax) related to nontaxable income are not allowed.

Section ***2.[~~3.~~]*** Tax Credits. A trust is allowed a tax credit of two (2) dollars; an estate is allowed a tax credit of ten (10)[~~twenty (20)~~] dollars.

Section ***3.[~~4.~~]*** Resident Estate or Trust. A resident estate or trust shall report and pay tax on all taxable income except that portion of net income distributable or distributed during the taxable year, and that portion of the net income from intangible personal property attributable to a nonresident beneficiary.

Section ***4.[~~5.~~]*** Resident Beneficiary. A resident beneficiary ***shall[~~must~~]*** report and pay tax on his share of the distributed or distributable income from a resident or nonresident estate or trust.

Section 5. Income from Kentucky Sources. Income from Kentucky sources shall include income arising from all:

(1) Activities carried on in this state, including labor performed or business done in this state;

(2) Services performed in this state;

(3) Real or tangible property located in this state; or

(4) Intangible property that has acquired a business situs in this state.

Section 6. Nonresident Estate or Trust. A nonresident estate with gross income for the taxable year from Kentucky sources of $1,200 or more and a nonresident trust with gross income for the taxable year from Kentucky sources of $100 or more ***shall[~~must~~]*** pay tax on all taxable income ***from Kentucky sources,*** except that portion of net income distributable or distributed during the taxable year and that portion of the net income from intangible personal property attributable to a nonresident beneficiary[~~and Nonresident Beneficiaries. A nonresident estate, trust, or beneficiary is subject to tax only on income received from real or tangible personal property located in Kentucky~~].

Section 7. Nonresident Beneficiaries. Nonresident beneficiaries ***shall[~~must~~]*** pay tax on income derived from***[~~:~~***

~~(1)~~] Kentucky sources***[~~;~~***

~~(2) Activities carried on in Kentucky;~~

~~(3) The performance of services in Kentucky;~~

~~(4) Real or tangible property located in Kentucky; and~~

~~(5) From a partnership, S corporation, or other pass-through entity doing business in Kentucky]~~.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 14, 2018

FILED WITH LRC: September 14, 2018 at noon

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, December 11, 2018)

105 KAR 1:145. Voluntary Cessation of participation by employers.

RELATES TO: KRS 61.510, 61.522, 61.546, 61.552, 61.555, 61.565, 61.590, 61.598, 61.625, 61.637, 61.675, 78.510 – 78.852, 26 U.S.C. 401

STATUTORY AUTHORITY: KRS 61.522(8), 61.645(9)(e) [~~61.645(9)(g)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e)[~~61.645(9)(g)~~] ***requires[~~authorizes~~]*** the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, and 78.510 to 78.852. KRS 61.522 authorizes certain participating employers in the Kentucky Employees Retirement System and the County Employees Retirement System to voluntarily cease participation if that employer pays[~~they pay~~] the full actuarial cost of benefits accrued by its current and former employees. KRS 61.522(8) requires the Board[~~board~~] to promulgate administrative regulations to administer the provisions of the statute. This administrative

regulation establishes the procedures and requirements for voluntary cessation from[~~of~~] participation in the Kentucky Employees Retirement System and the County Employees Retirement System[~~by qualifying employers~~].

Section 1. Definitions. (1) "Ceased employer" means an employer:

(a) Whose Form 7730, Application for Voluntary Cessation from CERS or KERS, has been approved by Kentucky Retirement Systems[~~the systems~~]; and

(b) Who has paid the full actuarial cost[~~:~~

~~1. Has paid the full actuarial cost; or~~

~~2. Is currently paying the full actuarial cost by installments for a period of time determined by the board pursuant to KRS 61.522(3)(a)~~].

(2) "Effective cessation date" means the last day of the Kentucky Employees Retirement Systems' or the County Employees Retirement Systems' plan year.

(3) "Plan year" means the period beginning July 1 and ending June 30.

Section 2. (1) An employer may request an estimate of the actuarial cost of ceasing participation from Kentucky Employees Retirement System or County Employees Retirement System. The request shall be made by completing the Form 7725, Request for Estimated Actuarial Cost of Voluntary Cessation.

(2) Kentucky Retirement Systems shall provide the estimate of the cost as of the next available cessation date.

(3) Kentucky Retirement Systems shall provide the estimate of the cost based on the information currently in its database and projecting the service and salary of all active employees as if they remain employed and continue to earn the same creditable compensation through the next available cessation date.

(4) The estimated actuarial cost of ceasing participation shall not be binding on Kentucky Retirement Systems.

(5) The employer shall not rely on the estimated actuarial cost of ceasing participation.

(6) Kentucky Retirement Systems shall notify the employer of the administrative cost to process the Form 7725, Request for Estimated Actuarial Cost of Voluntary Cessation. The administrative cost shall be calculated as follows:

(a) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of voluntary cessation equals one (1) to 100 employees, the administrative cost shall be $1,500.

(b) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of voluntary cessation equals 101 or more employees, the administrative cost shall be $4,000.

(7) Kentucky Retirement Systems shall process the Form 7725, Request for Estimated Actuarial Cost of Voluntary Cessation, after the employer has remitted its payment for the administrative cost.

Section 3. (1) The governing body of an employer seeking to cease participation in Kentucky Employees Retirement System or County Employees Retirement System shall pass a resolution to voluntarily cease participation in Kentucky Employees Retirement System or County Employees Retirement System.

(2) The resolution shall contain the following statements:

(a) That the employer has decided to voluntarily cease participation in Kentucky Employees Retirement System or County Employees Retirement System;

(b) That the employer acknowledges that the employer is subject to the requirements and restrictions of KRS 61.522 and this administrative regulation;

(c) That the employer acknowledges that in order to voluntarily cease participation in Kentucky Employees Retirement System or County Employees Retirement System the employer shall pay the full actuarial cost of withdrawal and all administrative costs;

(d) That the employer acknowledges that its[~~the employer's~~] employees will no longer earn service credit in Kentucky Employees Retirement System or County Employees Retirement System for employment with the employer after its[~~the employer's~~] approved effective cessation date from Kentucky Employees Retirement System or County Employees Retirement System under KRS 61.522 and this administrative regulation;

(e) That the employer agrees to cooperate with Kentucky Retirement Systems to educate its[~~the employer's~~] employees about the effect of the employer's cessation on the employees'[~~their~~] retirement accounts and the employees'[~~their~~] options regarding their retirement accounts; and

(f) That the employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined by KRS 61.510(41) or 78.510(38) or retaliate against its employees who chose not to take refunds of their accumulated account balance as defined in KRS 61.510(41) or 78.510(38).

Section 4. (1) An employer seeking to cease participation in Kentucky Employees Retirement System or County Employees Retirement System shall file a completed Form 7730, Application for Voluntary Cessation from CERS or KERS, with the executive director of Kentucky Retirement Systems by December 31 during the plan year containing the employer's selected effective cessation date.

(2) The employer shall submit the following documents with its Form 7730, Application for Voluntary Cessation from CERS or KERS:

(a) The Resolution of the governing body[~~Board~~] of the employer resolving to voluntarily cease its participation in Kentucky Employees Retirement System or County Employees Retirement System;

(b) The employer's Articles of Incorporation, if applicable;

(c) The employer's current by-laws, if applicable;

(d) The employer's Certificate of Existence/Authorization from the Kentucky Secretary of State, if applicable;

(e) Documentation of the alternative retirement program created by or being created by the employer for its employees, such as a written description of the alternative retirement program;

(f) The employer's most recent five (5) audited financial statements and independent auditor's reports;

(g) The employer's most recent five (5) Consolidated Annual Financial Reports, if applicable; and

(h)[~~For employers intending to pay the full actuarial cost by lump sum,~~] Documentation of the source of the funds the employer intends to use to pay the full actuarial cost.[~~; and~~

~~(i) For employers intending to pay the full actuarial costs by installment payment plan, documentation of:~~

~~1. Source of funds to pay the installment payments;~~

~~2. List of real property owned by the employer, including deeds of conveyance, title, all liens or encumbrances on the real property, and any current written contractual lease or rental agreement of the real property identified;~~

~~3. List of liabilities of the employer;~~

~~4. Inventory of all other chattel and personal property owned by the employer or in which the employer has an interest that may be used as collateral by the employer, including a description of the property, the location of the property, and an estimated value; and~~

~~5. A Proposed Detailed Financing Statement.~~]

(3) The employer shall submit with its Form 7730, Application for Voluntary Cessation from CERS or KERS, an encrypted electronic file listing each current and former ***full-time[full time]*** employee as defined by KRS 61.510(21) and 78.510(21) who were employed during any time period the employer participated in Kentucky Employees Retirement System or County Employees Retirement System, containing:

(a) Full name;

(b) Last known address;

(c) Date of birth;

(d) Social security number or Kentucky Retirement Systems member identification number[~~id~~];

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer

filing the Form 7730, Application for Voluntary Cessation from CERS or KERS, if available; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer filing the Form 7730, Application for Voluntary Cessation from CERS or KERS.

(4) The employer shall submit with its Form 7730, Application for Voluntary Cessation from CERS or KERS, a list of pending lawsuits, legal actions, arbitrations, mediations, and other litigation[~~, except for cases in which the employer is seeking to collect a debt owed to it by one (1) of its members,~~] to which the employer is a party including:

(a) Name of the case;

(b) The case number;

(c) The name and address of the court, arbitrator, mediator, or administrative agency in which the case is pending; and

(d) A copy of the complaint or a description of the allegations made in the complaint as well as the type and amount of relief sought by the plaintiff or plaintiffs.

(5) Kentucky Retirement Systems shall not accept or continue processing a Form 7730, Application for Voluntary Cessation from CERS or KERS, for an employer who:

(a) Has not paid or otherwise resolved all its outstanding invoices with Kentucky Retirement Systems;

(b) Has reporting that is not correct in accordance with KRS 61.675, 78.625, and 105 KAR 1:140; or

(c) Is a party to pending legal action in which Kentucky Retirement Systems is an adverse party and the result of which may affect the accounts of the employer's employees, the employer's full actuarial cost of ceasing participation, or the amount of employer contributions owed by the employer.

(6) The Board of Trustees of Kentucky Retirement Systems shall accept or reject the Form 7730, Application for Voluntary Cessation from CERS or KERS, for processing prior to the effective cessation date following submission of the Form 7730, Application for Voluntary Cessation from CERS or KERS.

Section 5. (1) The employer shall pay the administrative costs incurred by Kentucky Retirement Systems for processing the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS.

(2) The employer shall pay $10,000 as a deposit with the Form 7730, Application for Voluntary Cessation from CERS or KERS.

(3) Kentucky Retirement Systems shall place the deposit in a designated account and shall utilize the funds to pay the administrative costs of processing the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS.

(4) Kentucky Retirement Systems shall maintain records of all costs associated with the processing of the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, including:

(a) The cost of compensation and benefits of Kentucky Retirement Systems' employees computed on an hourly basis;

(b) Fees incurred by Kentucky Retirement Systems for use of external professional services; and

(c) The costs of postage, printing, and other expenses incurred by Kentucky Retirement Systems.

(5) Kentucky Retirement Systems shall calculate its total administrative costs and send an invoice to the employer either after the employer gives notice to Kentucky Retirement Systems pursuant to Section 10(3) of this administrative regulation or following withdrawal of the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS.

(a) Kentucky Retirement Systems shall apply the deposit received pursuant to subsection (2) of this section to any administrative costs incurred by Kentucky Retirement Systems as a result of the employer seeking to utilize the provisions of KRS 61.522.

(b) Following the application of the deposit to the outstanding administrative costs, Kentucky Retirement Systems shall submit an invoice to the employer for the additional administrative costs and the employer shall pay the invoice for the remaining administrative costs within thirty (30) days of the date of the invoice.

(6)(a) If the total administrative cost is less than the deposit paid by the employer, Kentucky Retirement Systems shall apply the remaining balance of the deposit to the:

1. Full actuarial cost if the employer gives notice of its intention to proceed with the voluntary withdrawal pursuant to Section 10(3) [~~9(3)~~] of this administrative regulation; or

2. Amount owed by the employer to Kentucky Retirement Systems for continued participation if the employer gives notice of its intention not to proceed with the voluntary withdrawal pursuant to Section 10(3)[~~9(3)~~] of this administrative regulation.

(b) Kentucky Retirement Systems shall refund any remaining balance to the employer after the amounts due pursuant to paragraph (a) of this subsection have been satisfied.

(7) The Board of Trustees of Kentucky Retirement Systems shall not consider the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, until the employer has paid all the administrative costs incurred by Kentucky Retirement Systems.

(8) The costs paid pursuant to this section shall not be refunded to the employer if the employer withdraws its application.

Section 6. (1) Kentucky Retirement Systems shall make[~~take~~] reasonable efforts to notify each employee identified on the list provided by the employer that the employer has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, to voluntarily cease participating in County Employees Retirement System or Kentucky Employees Retirement System.

(2) Kentucky Retirement Systems shall provide notice informing the employee of the employee's right to request an irrevocable refund, pursuant to KRS 61.522(3)(a)5., of their accumulated account balance as defined in KRS 61.510(41) or 78.510(38) within sixty (60) days of the employer's effective cessation date by submitting a completed Form 1500, KRS 61.522 60-Day Transfer Request, to Kentucky Retirement Systems. The notice shall be sent at least ten (10) days prior to the employer's effective cessation date.

(a) Kentucky Retirement Systems shall send the notice to the active employees listed by the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, on its most recent report required by KRS 61.675 or 78.625 filed prior to the date the notices required by KRS 61.522 are mailed.

(b) The employer shall submit the name and contact information of each employee it hires between the date the employer filed its Form 7730, Application for Voluntary Cessation from CERS or KERS, and the employer's effective cessation date within five (5) days of the date the employee begins working for the ceasing employer.

(c) A Form 1500, KRS 61.522 60-Day Transfer Request, submitted on or before the employer's effective cessation date shall be void.

(d) A Form 1500, KRS 61.522 60-Day Transfer Request, submitted after the last day of the sixty (60) day refund period shall be void.

(e) The employee shall be employed by the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, on the employer's effective cessation date to be eligible to request a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5.

(f) If the employee requests a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5., the employee's accumulated account balance shall be transferred to the employer's alternative retirement plan pursuant to this section even if the employee terminates employment with the employer prior to the date the Board of Trustees of Kentucky Retirement Systems has approved the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, and the employer has become a ceased employer.

(3)(a) The employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, shall establish an alternative retirement plan that is a qualified plan pursuant to 26 U.S.C. 401 on or before the expiration of the sixty (60) day refund period provided in KRS 61.522(3)(a)5.

(b) The employer shall submit verification that it has

established an alternative retirement plan that is a qualified plan pursuant to 26 U.S.C. 401.

(c) Kentucky Retirement Systems shall accept one (1) of the following as verification that the employer has established an alternative retirement plan that is a qualified plan pursuant to 26 U.S.C. 401:

1. A determination letter from the Internal Revenue Service providing that the alternative retirement plan established by the employer is a qualified plan pursuant to 26 U.S.C. 401;

2. A letter from the employer's legal counsel certifying that the alternative retirement plan established by the employer is intended as a qualified plan pursuant to 26 U.S.C. 401 capable of accepting trustee to trustee transfers; or

3. Other reliable verification as determined by Kentucky Retirement Systems.

(d) Refunds requested pursuant to KRS 61.522(3)(a)5. shall be transferred to the alternative retirement plan established by the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, by trustee to trustee transfer after the Board of Trustees of Kentucky Retirement Systems has approved the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, and the employer has become a ceased employer.

1. The alternative retirement plan shall accept and separately account for post-tax employee contributions.

2. The employer's legal counsel shall provide written certification that its alternative retirement plan shall accept and separately account for post-tax employee contributions.

(e) If the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS, fails to establish an alternative retirement plan pursuant to paragraph (a) of this subsection or refuses to accept and separately account for post-tax employee contributions, the refund requests pursuant to KRS 61.522(3)(a)5. shall be void. The employees who filed the refund requests pursuant to KRS 61.522(3)(a)5. shall remain members of the system and shall be included in the full actuarial cost.

(4) The employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined in KRS 61.510(41) or 78.510(38) or retaliate against any employee who does not take refund of their accumulated account balance as defined by KRS 61.510(41) or 78.510(38).

(5) Former employees of the ceased employer who are currently participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, due to employment with a participating agency, shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(6) Current employees of the employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance.

(7) Current employees of the employer on its effective cessation date may request a refund pursuant to KRS 61.522(3)(a)5.

(8) Former employees of the employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance pursuant to KRS 61.522(3)(a)5.[~~(9) Current and former employees shall not be eligible to purchase service credit pursuant to KRS 61.552 after the employer's effective cessation date.~~

~~(a) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or rejected by the Board of Trustees of Kentucky Retirement Systems, the employee's eligibility to purchase service pursuant to KRS 61.552 shall be reinstated.~~

~~(b) An employee may purchase service credit pursuant to KRS 61.552(23) for service with an employer other than the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS.~~

~~(10)(a) Former employees shall not be eligible to purchase service after the employer's effective cessation date pursuant to KRS 61.552(1) through (5), (12), (14), (15), (21), (22), (23), (24), (26), (28), and (30) if the service is related to employment with the employer who has filed a Form 7730, Application for Voluntary Cessation from CERS or KERS.~~

~~(b) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or rejected by the Board of Trustees of Kentucky Retirement Systems, the employee's eligibility to purchase service pursuant to KRS 61.552(1) through (5), (12), (14), (15), (21), (22), (23), (24), (26), (28), and (30) shall be reinstated.~~]

Section 7. (1) The employer shall continue to file reports in accordance with KRS 61.675, 78.[,]625, and 105 KAR 1:140 after the employer's effective cessation date until the Form 7730, Application for Voluntary Cessation from CERS or KERS, is approved by the Board of Trustees of Kentucky Retirement Systems and the employer becomes a ceased employer.

(2) The employer shall continue to remit employer contributions in accordance with KRS 61.675, 78.625, and 105 KAR 1:140 after the effective cessation date until the Form 7730, Application for Voluntary Cessation from CERS or KERS, is finally approved by the Board of Trustees of Kentucky Retirement Systems and the employer becomes a ceased employer.

(a)1. Kentucky Retirement Systems shall hold the employer contributions until the Form 7730, Application for Voluntary Cessation from CERS or KERS, is finally approved by the Board of Trustees of Kentucky Retirement Systems and the employer becomes a ceased employer.

2. Kentucky Retirement Systems shall credit the entire sum of the employer contributions remitted pursuant to this section to the employer's full actuarial cost[~~if the employer is paying by lump sum as established in Section 10(1)(a) of this administrative regulation or to the employer's initial payment under the installment payment plan established pursuant to Section 10(1)(b) of this administrative regulation~~].

(b) If the employer does not become a ceased employer because it withdraws its Form 7730, Application for Voluntary Cessation from CERS or KERS, or if its Form 7730, Application for Voluntary Cessation from CERS or KERS, is rejected by the Board of Trustees of Kentucky Retirement Systems, the employer contributions remitted pursuant to this subsection shall be credited towards any outstanding contributions owed for its continued participation in Kentucky Employees Retirement System or County Employees Retirement System while the Form 7730, Application for Voluntary Cessation from CERS or KERS, was pending.

(c) Kentucky Retirement Systems shall refund any remaining balance to the employer after the amounts due pursuant to paragraphs (a) and (b) of this subsection have been satisfied.

(3)(a) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or is rejected by the Board of Trustees of Kentucky Retirement Systems, the employer shall resume withholding employee contributions effective the month after the month in which the Form 7730, Application for Voluntary Cessation from CERS or KERS, was withdrawn or rejected.

(b) Pursuant to KRS 61.552(20)[~~61.552(23)~~], if the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or is rejected by the Board of Trustees of Kentucky Retirement Systems, Kentucky Retirement Systems shall provide notice to each employee of the amount of employee contributions due to Kentucky Retirement Systems for the time period between the employer's proposed effective cessation date and the date the Form 7730 was withdrawn or rejected.

(c) The employee shall not receive service credit for the period between the employer's proposed cessation date and the date the Form 7730, Application for Voluntary Cessation from CERS or KERS, was withdrawn or rejected, if the employee does not pay the employee contributions to Kentucky Retirement Systems.

(4)(a) If a member who is an employee of the employer that has filed a Form 7730, Application for Voluntary Cessation from

CERS or KERS, files for disability retirement benefits while the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS is pending, Kentucky Retirement Systems shall use the employer's proposed effective cessation date as the member's last day of paid employment if the member has not established a last day of paid employment prior to the employer's effective cessation date.

(b) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or rejected by the Board of Trustees of Kentucky Retirement Systems, Kentucky Retirement Systems shall determine the member's last day of paid employment pursuant to KRS 61.510(32) if the member has paid the employee contributions due.

(c) If an employee does not pay the employee contributions due, the first day of the month the employer resumes withholding employee contributions shall be a reemployment date for purposes of determining eligibility for disability retirement benefits.

(5) The employer shall continue to pick-up payments for installment purchase of service for any employee who is purchasing service pursuant to KRS 61.552(14)[~~61.552(16)~~] and 105 KAR 1:150.

(a) The employee shall have sixty (60) days from the date the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is finally approved by the Board of Trustees of Kentucky Retirement Systems and the employer becomes a ceased employer to pay in full any outstanding balance on the installment purchase agreement pursuant to KRS 61.552(14)[~~61.552(16)~~] and 105 KAR 1:150.

(b) If the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or is rejected by the Board of Trustees of Kentucky Retirement Systems, the employee's installment purchase of service agreement shall remain in effect.

(6)(a) The four (4) percent employer pay credit and applicable interest accrued while employed with a ceased employer shall vest as of the effective cessation date for those employees who began participating on or after January 1, 2014[~~Employees of the ceased employer who began participating on or after January 1, 2014 shall be vested in the four (4) percent employer pay credit and applicable interest attributable to the time the employee was employed by the ceased employer that had been accrued as of the ceased employer's cessation date~~].

(b) Employees of the ceased employer who began participating on or after January 1, 2014, shall not be vested in the four (4) percent employer pay credit or applicable interest attributable to the time the employee was employed with an employer other than the ceased employer.

Section 8. (1) Employees of an employer that has submitted a Form 7730, Application for Voluntary Cessation from CERS or KERS, shall comply with the provisions of KRS 61.590, 61.625, and 61.637.

(2) Employees of a ceased employer shall terminate employment with all participating employers of the State Police Retirement System, County Employees Retirement System, Kentucky Employees Retirement System, and the ceased employer prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3)(a) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(b) The ceased employer shall certify that the employee seeking to retire or take a refund is terminating employment or has terminated employment with no prearranged agreement to return to work for the ceased employer.

Section 9. (1) Employees[~~The employee~~] shall receive service credit for sick leave accrued pursuant to KRS 61.546 or 78.616 as of the effective[~~employer's~~] cessation date.

(a) If the employer participates in a sick leave program established in KRS 61.546 or 78.616, the[~~The~~] employer shall report to Kentucky Retirement Systems the number of hours of each employee's accumulated sick leave as of the effective cessation date[~~if the employer is under one (1) of the sick leave programs established in KRS 61.546 or 78.616(1) through (4).~~

~~(b) The employer shall report the number of days of each employee's accumulated sick leave as of the cessation date if the employer elected the sick leave program established in KRS 78.616(5)~~].

(b)[~~(c)~~] Kentucky Retirement Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine[~~and include the months in the calculation of~~] the employer's full actuarial cost.

(2) Kentucky Retirement Systems shall credit the months of military service[~~to which the employee is entitled~~] pursuant to KRS 61.555***(1) and (2)***[~~(1-2)~~][~~KRS 61.555(1) and (2) if reported by the employer or by the employee~~] prior to the employer's effective cessation date and include the months in the calculation of the employer's full actuarial cost.

Section 10. (1) The employer shall pay or otherwise resolve all its invoices and correct all reporting in accordance with KRS 61.675, 78.625, and 105 KAR 1:140 by August 31 after the effective cessation date.

(2) Kentucky Retirement Systems shall provide the employer with the amount of the full actuarial cost by sending a notice of actuarial cost and the report of the actuary to the employer.

(3) The employer shall notify Kentucky Retirement Systems in writing of its decision to voluntarily cease participation or withdraw the Form 7730, Application for Voluntary Cessation from CERS or KERS, within sixty (60) days of the date of the notice of actuarial cost.[~~If the employer intends to cease participation, it shall also provide notice of how it intends to pay the full actuarial cost.~~

~~(a) If an employer intends to pay the full actuarial cost by installment payment plan, the employer shall provide Kentucky Retirement Systems a list of collateral to use as security for the installment payment plan.~~

~~(b) The employer shall take all actions necessary to perfect the security interest in the collateral for Kentucky Retirement Systems.~~]

(4) The employer shall submit the final plan documents for its alternative retirement program with its notification if it intends to cease participation.

(5) The Board of Trustees of Kentucky Retirement Systems shall not consider the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, until the employer has paid all the administrative costs incurred by Kentucky Retirement Systems, pursuant to Section 5 of this administrative regulation.

(6) After the employer has paid all the administrative costs, the Board of Trustees of Kentucky Retirement Systems shall approve or reject the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS.

Section 11. (1) The ceased employer shall pay the full actuarial cost of benefits accrued by its current and former employees by lump sum payment within thirty (30) days of the date the Board of Trustees of Kentucky Retirement Systems approves its application.

(2) If the employer's Form 7730 has not received final approval by the Board of Trustees of Kentucky Retirement Systems or the ceasing employer has not paid the full actuarial cost by lump sum within thirty (30) days of the date of the Board of Trustees of Kentucky Retirement Systems' final approval of its application, the employer's Form 7730 shall be void.[~~:~~

~~(a) Lump sum payment paid within thirty (30) days of the date the Board of Trustees of Kentucky Retirement Systems approves its application; or~~

~~(b) Installment payment plan pursuant to KRS 61.522(3).~~

~~(2) Kentucky Retirement Systems shall use the assumed rate of return adopted by the Board of Trustees of Kentucky Retirement Systems as of the employer's cessation date as the interest rate for the ceased employer's installment payment plan.~~

~~(3)(a) A ceased employer whose full actuarial cost is less than $40,000,000.00 shall have up to sixty (60) months to pay the full actuarial cost plus interest at the actuarially assumed rate of return by monthly installment payments.~~

~~(b) A ceased employer whose full actuarial cost is greater than or equal to $40,000,000.00 and less than $70,000,000.00 shall have up to 120 months to pay the full actuarial cost plus interest at~~

~~the actuarially assumed rate of return by monthly installment payments.~~

~~(c) A ceased employer whose full actuarial cost is greater than or equal to $70,000,000.00 and less than $100,000,000.00 shall have up to 180 months to pay the full actuarial cost plus interest at the actuarially assumed rate of return by monthly installment payments.~~

~~(d) A ceased employer whose full actuarial cost is greater than or equal to $100,000,000.00 shall have up to 240 months to pay the full actuarial cost plus interest at the actuarially assumed rate of return by monthly installment payments.~~

~~(e) The amount of a ceased employer's monthly installment payment shall not be less than the average amount of the monthly employer contributions remitted during in the fiscal year containing the employer's effective cessation date.~~

~~(4) The ceased employer shall pay the initial installment payment for the fiscal year after the employer's cessation date within thirty (30) days of the final decision of the Board of Trustees approving the ceased employer's application for voluntary withdrawal.~~

~~(5) The ceased employer shall pay installment payments annually for the ensuing fiscal year on July 1 of each year.~~

~~(6) If the ceased employer defaults on the installment payment plan agreement, the employer shall be responsible for all administrative and legal fees incurred by Kentucky Retirement Systems to enforce the agreement.~~]

Section 12. (1) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceasing employer, must either complete the purchase or enter into a service purchase agreement with Kentucky Retirement Systems no later than the employer's effective cessation date.

(2) ***Pursuant to KRS 61.552,*** current and former employees shall not be eligible to purchase service credit related to employment with a ceased employer***[~~, pursuant to KRS 61.552~~]*** after the employer's effective cessation date.

(3) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer.

(4) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

(5) An employee's eligibility to purchase service credit pursuant to KRS 61.552 shall be reinstated if the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, is withdrawn by the employer or rejected by the Board of Trustees of Kentucky Retirement Systems.[~~(1) A person shall not purchase service pursuant to KRS 61.552(1) through (5), (12), (14), (15), (21), (22), (23), (24), (26), (28), and (30) if the service was with a ceased employer.~~

~~(2) An employee who becomes employed with a participating employer after terminating employment with a ceased employer may purchase service credit the employee would otherwise be eligible to purchase pursuant to KRS 61.552(8), (11), (18), (19), (20), (25), and (29).~~

~~Section 13. If the ceased employer was the last participating employer for the employee prior to the employee's retirement, the additional actuarial costs resulting from annual increases over ten (10) percent as established in KRS 61.598 shall not be invoiced to the ceased employer, but shall be collected pursuant to KRS 61.565.~~]

Section 13[~~14~~]. (1) If an employer files legal action against Kentucky Retirement Systems regarding the provisions of KRS 61.522 or this administrative regulation, the employer shall pay all administrative costs and legal fees incurred by Kentucky Retirement Systems if the employer's legal action against Kentucky Retirement Systems is unsuccessful or is dismissed for any reason other than by the agreement of the parties.

(2) The Board of Trustees of Kentucky Retirement Systems shall not approve or deny the employer's Form 7730, Application for Voluntary Cessation from CERS or KERS, until the legal action is resolved.[~~Section 15. If the employer's Form 7730 has not received final approval by Kentucky Retirement Systems' Board of Trustees or the withdrawing employer has not paid either the full actuarial cost by lump sum or the initial payment pursuant to the installment plan on or before June 30 of the year following the requested withdrawal date, the employer's Form 7730 shall be void.~~]

Section 14[~~16~~]. If any due date or time period deadline provided in KRS 61.522 or this administrative regulation falls on a Saturday, Sunday, or day that Kentucky Retirement Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.

Section 15[~~17~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 7725, "Request for Estimated Actuarial Cost of Voluntary Cessation", October 2015;

(b) Form 7730, "Application for Voluntary Cessation from CERS or KERS", July 2018[~~March 2016~~]; and

(c) Form 1500, "KRS 61.522 60-Day Transfer Request", March 2016.

(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, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 12, 2018 at 2 p.m.

CONTACT PERSON: Mark C. Blackwell, Executive Director Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, email mark.blackwell@kyret.ky.gov, phone (502) 696-8800 ext. 8645, fax (502) 696-8801.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, December 11, 2018)

105 KAR 1:147. Involuntary cessation of participating employers.

RELATES TO: KRS 61.510, 61.522, 61.546, 61.552, 61.555, 61.565, 61.590, 61.598, 61.625, 61.637, 61.675, 78.510 – 78.852, 26 U.S.C. 401

STATUTORY AUTHORITY: KRS 61.522(8), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) ***requires[~~authorizes~~]*** the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, and 78.510 to 78.852. KRS 61.522 authorizes the Board of Trustees of Kentucky Retirement Systems to involuntarily terminate participation of employers in the Kentucky Employees Retirement System and the County Employees Retirement System determined by the board to no longer qualify to participate in a governmental plan or to be noncompliant with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852. The Board of Trustees of Kentucky Retirement Systems shall require lump sum payment of the full actuarial cost of benefits accrued by its current and former employees for those involuntarily ceased employers. KRS 61.522(8) requires the board to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the procedures and requirements for involuntary cessation from participation in the Kentucky Employees Retirement System and the County Employees Retirement System.

Section 1. Definitions.

(1) "Ceased employer" means an employer who the Board of

Trustees has determined must involuntarily cease participation.

(2) "Involuntary cessation date" means the date established by the Board of Trustees when approving the employer's involuntary cessation from participation in the Kentucky Employees Retirement System or County Employees Retirement System.

Section 2. Upon determination by the Board of Trustees, an employer shall be required to involuntarily cease participation from the Kentucky Employees Retirement System or the County Employees Retirement System.

(1) The Board of Trustees shall provide written notice to the employer of its intention to involuntarily cease participation. The notice shall be sent by certified mail to the employer's designated reporting official on file at Kentucky Retirement Systems.

(2) The notice shall provide an explanation of the board's decision for involuntary cessation, including whether:

(a) The board has determined that the employer is no longer qualified to participate in a governmental plan; or

(b) The board has determined that the employer has failed to comply with the requirements of KRS 61.510 to 61.705 or 78.510 to 78.852.

(3) The notice shall provide the employer with the opportunity to fully resolve its noncompliance within sixty (60) days of the date the notice was issued by Kentucky Retirement Systems. The board may extend this time if provided a written statement from the employer ensuring full resolution but requiring additional time due to factors outside the employer's control preventing the employer from fully resolving its noncompliance within sixty (60) days of the date of the notice.

(a) Upon expiration of this time, the board shall determine whether the employer fully resolved its noncompliance and shall remain a participant of the Kentucky Employees Retirement System or County Employees Retirement System or that the employer failed to fully resolve its noncompliance and to proceed with involuntary cessation.

(b) If the board determines that the employer fully resolved its noncompliance, then the employer shall be informed that the involuntary cessation process shall be suspended contingent upon continued compliance.

(4) If the board determines involuntary cessation should proceed, the employer shall be provided with written notice indicating:

(a) That the employer shall pay the full actuarial cost of the benefits accrued by its current and former employees;

(b) That the employer shall be responsible for all fees incurred by Kentucky Retirement Systems for use of external professional services including the administrative costs of an actuarial study performed by Kentucky Retirement Systems' consulting actuary;

(c) That the employer shall be responsible for reimbursing Kentucky Retirement Systems for the cost of compensation and benefits of Kentucky Retirement Systems' employees computed on an hourly basis as well as the costs of postage, printing, and other expenses incurred by Kentucky Retirement Systems;

(d) That the involuntary cessation of participation applies to all of the employer's current and former employees; and

(e) An involuntary cessation date.

(5) The employer shall submit in an encrypted electronic file a list of each current and former full-time employee as defined by KRS 61.510(21) and 78.510(21) who were employed during any time period the employer participated in Kentucky Employees Retirement System or County Employees Retirement System, containing:

(a) Full name;

(b) Last known address***;[:]***

(c) Date of birth***;[:]***

(d) Social Security number or Kentucky Retirement Systems member identification number;

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer.

(j) If the employer refuses or fails to submit the requested information, Kentucky Retirement Systems shall make reasonable efforts to issue a notice to the last known address on file to those current and former employees of the employer that involuntary cessation has been initiated. Kentucky Retirement Systems will provide an involuntary cessation date and notification that the employee will no longer earn service credit while employed with the employer after that date.

(6) Upon receipt of the actuarial study, Kentucky Retirement Systems shall:

(a) Issue an invoice to the employer for the full actuarial cost of cessation as determined in the actuarial study and the total administrative costs for administering the involuntary cessation; and

(b) Require the employer to pay the invoice by lump sum within thirty (30) days of its issuance by Kentucky Retirement Systems.

Section 3. (1) (a) Former employees of the ceased employer who are currently employed with a different employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(b) Current employees of the ceased employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance unless they terminate all employment with participating employers.

(2) Current employees of a ceased employer shall terminate employment with the ceased employer and all employers participating in the State Police Retirement System, County Employees Retirement System, and Kentucky Employees Retirement System prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(4) Employees of a ceased employer shall have sixty (60) days from the involuntary cessation date to pay in full any outstanding balance on an installment purchase agreement pursuant to KRS 61.552(14) and 105 KAR 1:150.

(5) (a) The four (4) percent employer pay credit and applicable interest accrued while employed with a ceased employer shall vest as of the involuntary cessation date for those employees who began participating on or after January 1, 2014.

(b) Employees of the ceased employer who began participating on or after January 1, 2014, shall not be vested in the four (4) percent employer pay credit or applicable interest attributable to a time of employment with an employer other than the ceased employer.

(6) Employees of the ceased employer shall receive service credit for sick leave accrued pursuant to KRS 61.546 or 78.616 as of the involuntary cessation date.

(a) If the employer participates in a sick leave program established in KRS 61.546 or 78.616, the employer shall report to Kentucky Retirement Systems the number of hours of each employee's accumulated sick leave as of the involuntary cessation date.

(b) Kentucky Retirement Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine the employer's full actuarial cost.

(c) If the employer refuses or fails to certify an employee's unused sick leave, Kentucky Retirement Systems shall credit the months of sick leave last reported to the employee's file with Kentucky Retirement Systems as of the employer's involuntary cessation date.

(7) Kentucky Retirement Systems shall credit the months of military service pursuant to KRS 61.555***(1) and (2)[(1)-(2)]*** reported prior to the employer's involuntary cessation date to determine the

employer's full actuarial cost.

(8) Kentucky Retirement Systems shall use the employer's involuntary cessation date as the member's last day of paid employment pursuant to KRS 61.510(32) for any member who files for disability retirement benefits that has not established a last day of paid employment prior to the involuntary cessation date.

Section 4. If the employer fails to timely remit the full actuarial cost and Kentucky Retirement Systems' total administrative costs attributable to involuntary cessation, the Board of Trustees may file an action in the Franklin Circuit Court to enforce the provisions of KRS 61.522 and this administrative regulation to recover the full actuarial cost.

Section 5. (1) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceasing employer, must either complete the purchase or enter into a service purchase agreement with Kentucky Retirement Systems no later than the employer's involuntary cessation date.

(2) ***Pursuant to KRS 61.552,*** current and former employees shall not be eligible to purchase service credit related to employment with a ceased employer***[, pursuant to KRS 61.552]*** after the employer's involuntary cessation date.

(3) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer.

(4) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

Section 6.***[(1)]*** If an employer files legal action against Kentucky Retirement Systems regarding the provisions of KRS 61.522 or this administrative regulation, the employer shall pay all administrative costs and legal fees incurred by Kentucky Retirement Systems if the employer's legal action against Kentucky Retirement Systems is unsuccessful or is dismissed for any reason other than by the agreement of the parties.

Section 7. If any due date or time period deadline provided in KRS 61.522 or this administrative regulation falls on a Saturday, Sunday, or day that Kentucky Retirement Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: October 4, 2018

FILED WITH LRC: October 5, 2018 at 10 a.m.

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GENERAL GOVERNMENT CABINET
Kentucky Board of Chiropractic Examiners
(As Amended at ARRS, December 11, 2018)

201 KAR 021:045. Specialties.

RELATES TO: KRS 312.019, 312.021

STATUTORY AUTHORITY: KRS 312.019[~~312.012~~], 312.021

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.021 ***requires[~~provides that~~]*** the board ***to[~~shall~~]*** identify by administrative regulation those specialties of chiropractic for which certification may be granted and ***to[~~shall~~]*** establish by administrative regulation the procedure for obtaining and maintaining certification and the fees therefor.***[~~The purpose of~~]*** This administrative regulation ***implements KRS 312.021[~~is to carry out that legislative direction~~]***.

Section 1. (1) A licensee***[~~who is~~]*** in active practice and in good standing with the board who ***makes a written request[~~applies~~]*** to the board***, provides proof of education,*** and pays the fee ***established[~~provided for~~]*** in Section ***3[~~4~~]*** of this administrative regulation shall be certified as a specialist in ***the licensee's[~~their~~]*** field of certification[~~chiropractic orthopedics~~], if the licensee[~~he~~] holds certified or diplomate status with a certification granting entity.

(2) The certification ***or diplomate program shall[~~granting entity must~~]*** be:

(a) Recognized by the American Chiropractic Board of Specialties; and

(b) Within the scope of practice as defined ***by[~~in~~]*** KRS 312.015 and 312.017[~~the American Board of Chiropractic Orthopedists or meets equivalent standards~~].

(3) Specialties certified include those such as radiology, nutrition, orthopedics, neurology, and pediatrics as approved by the American Board of Chiropractic Specialties.

(4) The complete list of approved and certified specialties is available on the board's Web site at www.kbce.ky.gov.

Section 2.[~~A licensee who is in active practice and in good standing with the board who applies to the board and pays the fee provided for in Section 4 of this administrative regulation shall be certified as a specialist in roentgenology, if he holds diplomate status with the American Chiropractic Board of Roentgenology or meets equivalent standards.~~

~~Section 3.~~] The applicant for certified status under[~~either~~] Section 1[~~or 2~~] of this administrative regulation shall submit with the applicant's[~~his~~] ***written request[~~application~~]*** proof of current status with the specialty certificate issuing board[~~American Board of Chiropractic Orthopedists or the American Chiropractic Board of Roentgenology or proof of meeting equivalent standards~~]. Certification by the board shall be for a stated period of time not exceeding one (1) year.

Section 3[4]. The board may charge a reasonable fee for certification of specialties. The fees currently charged by the board are $100 for certification of each specialty and thirty (30) dollars for annual renewal.

JEFF SMITH, D.C., President

APPROVED BY AGENCY: September 5, 2018

FILED WITH LRC: September 13, 2018 at noon

CONTACT PERSON: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784, email kychiro@glasgow-ky.com.

PUBLIC PROTECTION CABINET
Board of Examiners of Psychology
(As Amended at ARRS, December 11, 2018)

201 KAR 26:130. Grievances and administrative complaints[~~Grievance procedure~~].

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

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319 and notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a credential holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations of applicable

statutes, administrative regulations, and orders of the board. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

Section 1. Definitions.

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

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

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or 201 KAR Chapter 26.

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

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

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

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

Section 2. Grievance.

(1) Source[of grievance]. A grievance may be initiated by:

(a) The board;

(b)[, by] The public;[,] or

(c)[by] Any governmental agency.[A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.]

(2) Form[of a grievance].

(a) A grievance shall:

1. Be in writing;[and shall]

2. Clearly identify the person against whom the grievance is being made;[. Further, the grievance shall]

3. Contain the date;[, and]

4.[shall] Identify by printed name and signature the person making the grievance;[,] and[shall]

5. Contain a clear and concise statement of the facts giving rise to the grievance.

(b) A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.

(c) The board shall not accept or process anonymous grievances or administrative complaints.

(3) Receipt[of a grievance]. A grievance may be received by any:

(a)[any] Board member;[,]

(b) Credential holder designated by the board;[, by the Office of the Attorney General,] or

(c)[by any] Staff member.

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

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

(6) Investigation.

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

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

(c) Consideration of grievance and investigative report.

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

a. Grievance;

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

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

2. If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.

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

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

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

b. File suit to enjoin the violator; or

c. Seek criminal prosecution pursuant to KRS 319.990.

Section 3. Administrative Complaint. If the board determines that the grievance shall be made an administrative complaint, the administrative complaint shall be adjudicated pursuant to KRS Chapter 13B [the actions listed in this section shall be initiated.

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

(a) Each offense charged;

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

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

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

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

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

Section 4. Administrative Response. Within twenty (20) days of service of the formal administrative complaint, the respondent shall file with the board a written response to the specific allegations set forth in the administrative complaint. Allegations not properly responded to shall be deemed admitted, and may form the basis for a default adjudication against the person subject to the administrative complaint if the requisite elements of a violation are admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License Holder.

(1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism for identification adopted by the board[for identification].

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

(3) To protect the confidentiality of all parties, the board may

issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

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

Section 6. Fitness for Duty Examination.

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

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

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

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

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

(b) If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of KRS 319.082, the board shall so notify the person.

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

Section 7. Board Member Training for Cases of Sexual Misconduct.

(1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) An investigator shall not be assigned to cases where sexual misconduct has been alleged until the required training has been completed.

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

ELIZABETH MCKUNE, ED.D. Chair

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 4 p.m.

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

PUBLIC PROTECTION CABINET
Board of Examiners of Psychology
(As Amended at ARRS, December 11, 2018)

201 KAR 26:140. Procedures for disciplinary hearings.

RELATES TO: KRS Chapter 13B, 319.092

STATUTORY AUTHORITY: KRS 319.032

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

Section 1. Composition of the Hearing Panel.***[~~(1)~~]*** Disciplinary actions may be heard by a hearing panel consisting of either a hearing officer and at least one (1) board member appointed by the board, or upon unanimous decision of the board, only by a hearing officer.[~~(2) A board member who has participated in the investigation of a grievance or who has personal knowledge of the facts giving rise to the grievance or for other reasons is unable to render a fair and impartial decision shall not sit as a member of the panel hearing that particular complaint.~~

~~(3) Separation of functions. A member, officer, or employee of the board who is engaged in the performance of investigative or prosecutorial functions for the board in a particular case or a factually related case, shall not participate in or advise in the decision of the disciplinary action, except as a witness or counsel in the hearing.~~]

Section 2. Right of Administrative Hearing from a Denial of Initial Licensure or Refusal to Renew, Restore, or Reinstate a License.

(1) The board shall issue written notice of the denial of a license informing the applicant:

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

1. The statutory or regulatory violation; and

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

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

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

(3) If the request for an appeal is not timely filed, the notice of ***the*** denial of a license shall become a final order of the board[~~be effective~~] upon the expiration of the time for the certificate holder to request an appeal.

(4)[~~The~~] Documentary evidence for an appeal shall be limited to the application and supporting documents submitted to the board during the application process.

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

Section 3. Revocation of Probation.

(1) If the board moves to revoke probation of a probationee, the board shall issue written notice of the revocation ***of probation*** and inform the probationee:

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

(b) Of each probation term violated;

(c) Of the sanction to be imposed; and

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

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

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

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

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

Section 6. Hearing Fee. If the final order of the board is adverse to a credential holder or applicant, or if the hearing is scheduled at the request of a credential holder or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 319, a hearing fee in an amount equal to the costs of stenographic services, the costs of the services of a hearing officer, if any, and the board's attorney fees shall be assessed against the credential holder or applicant[~~respondent~~]. In case of financial hardship, the board may waive all or part of the fee.

Section 7. Notification of Action Taken. A public notification describing all final disciplinary actions taken by the board to suspend, revoke, or refuse to issue or renew a license, restrict, or place a credential holder on probation shall be provided as mandated by KRS 319.092(6)[~~,~~] and to the Association for State and Provincial Psychology Boards for publication in their data base.

ELIZABETH MCKUNE, ED.D., Chair
APPROVED BY AGENCY: October 12, 2018
FILED WITH LRC: October 12, 2018 at 4 p.m.
CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

PUBLIC PROTECTION CABINET
Board of Examiners of Psychology
(As Amended at ARRS, December 11, 2018)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), (5), 319.064(3), (5), 319.082(1), 319.092(3)(d), 319.118(1)
STATUTORY AUTHORITY: KRS 319.032(1)(l)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

Section 1. Board Approval Required.
(1) Except for graduate students as provided in Section 14[~~15~~] of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing.
(2) If there is a change in supervisor or in the supervisory arrangement, the supervisor and supervisee shall[~~submit a Request for Change of Supervisor and/or Frequency to the board describing the change at least thirty (30) days prior to the effective date of the change.~~]***:***
(a) Proceed with the change as soon as practicable so as to avoid a lapse of supervision for the supervisee***;[,]*** and
(b)[shall thereafter] Notify the board within thirty (30) days of the change for approval of the change of supervisor or supervisory arrangement.
(3) It shall be the joint responsibility of the supervisor and supervisee to assure that all reports, plans and goals, or other records of a supervisory relationship required by KRS Chapter 319 or these administrative regulations, are complete and***[are]*** filed with the board in a timely manner.

Section 2. Supervision Requirements.
(1) All supervision requirements shall:
(a) Be met with individual, face-to-face, weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections ***11[12]*** and ***14[15]*** of this administrative regulation; and
(b) Include additional supervision sessions as needed.
(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

Section 3. Relief from supervision Requirements During Inactive Period.
(1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain supervision during which period he or she shall not practice psychology.
(2) The certified psychologist or licensed psychological associate shall obtain a supervisor approved by the board before the resumption of practice.
(3) Upon resumption of practice, the certified psychologist or licensed psychological associate shall***:***
(a) Document compliance with continuing education requirements***;*** and
(b)[shall] Report on his or her activities and employment related to psychology during the period without supervision.

Section 4. Training and Continuing Education for Supervisors.
(1) A licensed psychologist with health service provider designation who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.
(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle as required by 201 KAR 26:175, Section 2***(4)[(5)]***(a). The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

Section 5. Supervisor Obligations.
(1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.
(2) The supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.
(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.
(4) The supervisor shall control, direct, or limit the supervisee's practice as appropriate to ensure[~~insure~~] that the supervisee's practice of psychology is competent.
(5) The supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the supervisor of record.
(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(4), (5), 319.064(3), (5), or 319.092(3)(d), the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. Supervisory Report.
(1) In calculating the amount of time spent in full-time practice while under supervision, 1,800 hours of supervised practice shall be equivalent to one (1) year of experience.
(2) The supervisor shall submit a Supervisory Report to the board of the supervision of each supervisee according to the following schedule:

CREDENTIAL STATUS	REPORTING PERIOD	REPORT DUE DATE(S)
(a) Licensed psychological associate or certified psychologist with 4 or more years of full-time practice, or its equivalent	Every 2 years (with prior board approval)	Anniversary date of supervisee's licensure
(b) Licensed psychological associate or certified psychologist with fewer than 4 years of full-time	Yearly	Anniversary date of supervisee's licensure

practice, or its equivalent		
(c) Temporarily licensed psychologist	Every 6 months and 1 month prior to structured exam	
(d) Temporarily licensed psychological associate	Every 6 months	
(e) Sanctioned credential holder	Quarterly	January, April, July, and October 15th

(3) The report shall include:

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

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

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

Section 7. Multiple Supervisors.

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

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

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

(1) Review[~~Read~~] and countersign[~~all~~] psychological assessments as appropriate based on the supervisee's level of experience;

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

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

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

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

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(4) Have direct observation of the supervisee's work:

(a) For a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, postlicensure practice, or its equivalent, or a licensure candidate with temporary permission to practice, direct observation shall take place at least once every two (2) months;

(b) For a licensed psychological associate or certified psychologist with more than four (4) years of full-time, postlicensure practice, or its equivalent, direct observation shall take place as needed;

(c)[~~at least once every two (2) months.~~] Direct observation may[~~can~~] be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Section 10.~~] (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek supervision as needed in addition to a regularly scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing Supervisory Plans and Goals and in completing the regular Supervisory Reports;

(b) Be jointly responsible with the supervisor for ensuring that a Supervisory Report has been sent to the board in accordance with the reporting schedule established in Section 6(2) of this administrative regulation; and

(c) Report to the board an apparent violation of KRS 319.082(1) on the part of the supervisor.

Section 10[~~11~~]. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, temporary licensed psychologist, trainee, or other provider and supervised by the licensed psychologist.

Section 11[~~12~~]. Frequency of Supervision.

(1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following licensure.

(2) After two (2) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board using a Request for Change of Supervisor and/or Frequency to alter the format, frequency, or duration of supervision if the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format from individual to group supervision. Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted plan.

(3)(a) After four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board for further modification of the format, frequency, or duration of supervision using a Request for Change of Supervisor and/or

Frequency, if the proposed change includes a minimum amount of one (1) hour of face-to-face supervision per month. Additional modifications of the format, frequency or duration of supervision may be submitted for approval by the board.

(b) Upon a change of supervisor, a new Supervisory Plans and Goals shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship, the final Supervisory Report shall be submitted to the board within thirty (30) days of the termination.

(4) Any change in the frequency or duration of supervision under this section may not occur automatically, but only upon a written request to the board and approval of the request by the board.

Section 12[~~13~~]. Supervision of a Disciplined Credential Holder.

(1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other in-formation relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to ensure[~~insure~~] that the disciplined credential holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;

(f) Report to the board any apparent violation of KRS 319.082(1) on the part of the disciplined credential holder;

(g) Immediately report to the board in writing[~~,~~] a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of psychology in a competent manner;

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

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

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being when it has direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice as appropriate to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 13[~~14~~]. Board Liaison for Disciplined Credential Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising psychologist from a list provided by the board;

(2) Provide the supervising psychologist with the originating complaint, agreed order, or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of a board member;

(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined credential holder. The notification letter shall:

(a) State the name of the supervising psychologist; and

(b) Specify that the disciplined credential holder shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising psychologist and disciplined credential holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined credential holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising psychologist and disciplined credential holder shall continue to meet;

(8) Remain available to the supervising psychologist to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising psychologist;

(10) Review the quarterly report of supervision and forward the report to the supervision committee of the board for approval; and

(11) Meet with the supervising psychologist and the disciplined credential holder at the end of the term of supervision to summarize the supervision.

Section 14[~~15~~]. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:

(1) Be supervised by a psychologist licensed by the Board of Examiners of Psychology with health service provider status, licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify their status as unlicensed psychology trainees to all clients and payors;

(4) Give to all clients and payors the name of the licensed psychologist responsible for their work; and

(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board.

Section 15[~~16~~]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Supervisory Plans and Goals", ***December[~~October~~]*** 2018

[~~February 2017~~];

(b) "Supervisory Report", ***December[~~October~~]*** 2018[~~October 2016~~]; and

(c) "Request for Change of Supervisor and/or Frequency", October 2016.

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

ELIZABETH MCKUNE, ED.D., Chair

APPROVED BY AGENCY: October 12, 2018

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CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

PUBLIC PROTECTION CABINET
Board of Examiners of Psychology
(As Amended at ARRS, December 11, 2018)

201 KAR 26:211. Repeal of 201 KAR 26:210.

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate administrative regulations that establish the requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure, and for preparing or selecting and administering examinations on general psychological knowledge. This administrative regulation ***repeals 201 KAR 26:210 which*** establishes educational requirements for licensure as a psychological associate ***because these provisions have been consolidated into 201 KAR 26:200***.

Section 1. 201 KAR 26:210, Educational requirements for licensure as a licensed psychological associate, is hereby repealed.

ELIZABETH MCKUNE, ED.D., Chair

APPROVED BY AGENCY: October 12, 2018

FILED WITH LRC: October 12, 2018 at 4 p.m.

CONTACT PERSON: David C. Trimble, General Counsel, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 782-8823; fax (502) 564-4818; email DavidC.Trimble@ky.gov.

PUBLIC PROTECTION CABINET
Board of Examiners of Psychology
(As Amended at ARRS, December 11, 2018)

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

RELATES TO: KRS 319.064

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

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

Section 1. Application.

(1) An application for a credential to perform certain functions as a licensed psychological associate may be submitted after the requirements established in KRS 319.064(2) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed Application for Licensure as a Psychological Associate to the board. The application shall:

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

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

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

(b) Be accompanied by:

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

2. Three (3) letters of reference or completed ***["]***Recommendation Form for Licensure as a Psychological Associate***["]*** from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., or Ed.D.); and

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

Section 2. Temporary Licensure.

(1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3).

(2) The request for a temporary credential shall be co-signed by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board and who holds the health services provider designation.

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

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

1. Successfully complete all credentials and examination procedures; and

2. Pass the ***Examination for Professional Practice in Psychology (***EPPP***)***.[~~(c)1. A candidate shall score at least an eighty (80) percent to pass the structured examination of Kentucky mental health law.~~

~~2. A candidate shall score a 100 percent to pass the oral examination on ethical principles and professional practice.~~]

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

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

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which a candidate who has completed his or her degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor.

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

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

(3) The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in subsection (1) of this section, the candidate shall be practicing psychology under the

jurisdiction of the board, and shall be subject to KRS Chapter 319 and 201 KAR Chapter 26.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Licensure as a Psychological Associate", February 2017;

(b) "Recommendation ***Form*** for Licensure as a Psychological Associate", February 2017; and

(c) "Request for Extension of Temporary Licensure as a Psychological Associate", February 2017.

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

ELIZABETH MCKUNE, ED.D.,Chair

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GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(As Amended at ARRS, December 11, 2018)

201 KAR 028:060.[~~Requirements for~~] Licensure, renewals, and reinstatements.

RELATES TO: KRS 319A.080, 319A.100, 319A.110, 319A.120, 319A.140, 319A.150, 319A.160, 319A.170

STATUTORY AUTHORITY: KRS 319A.070(1), (3)(a), 319A.100, 319A.160, 319A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070(3)(a) authorizes the board to promulgate administrative regulations and administer the provisions of KRS Chapter 319A. KRS 319A.100 authorizes the board to issue a temporary permit to certain applicants for licensure. KRS 319A.170 requires the board to determine and collect licensure fees. KRS 319A.160 authorizes the board to set fees for ***renewal, late renewal[~~renewals, late renewals~~]***, reinstatement, and activation of an inactive license. This administrative regulation sets forth the procedure by which applicants shall apply for, renew, or reinstate a temporary permit or license administered by the board under the provisions of KRS Chapter 319A.

Section 1. Initial Licensure[~~of an OT/L~~]. An applicant for licensure administered by the board who[~~as an OT/L that~~] has not previously been licensed, certified, or registered in any state shall submit[~~meet the following requirements~~]:

(1)[~~Submit~~] A completed[~~OT/L~~] Application Form, Form OTB-1;

(2)[~~Submit~~](a) A certified copy of an official academic[~~the applicant's~~] transcript from an occupational therapy or occupational therapy assistant program accredited by the ACOTE or its equivalent indicating that the applicant successfully completed educational and fieldwork requirements; or

(b) For applicants trained at an educational facility outside the United States, evidence of legal permission, as furnished by the U.S. Department of Immigration and Naturalization, for employment in the United States[~~for an OTR/L has a baccalaureate degree, postbaccalaureate certificate, master's degree, or doctorate degree from an occupational therapy program accredited by the ACOTE or its equivalent~~];

(3)[~~Submit~~] Electronic verification by the NBCOT***[~~:~~]***[~~stating~~] that the applicant:

(a) Meets the requirements of certification as an OTR***[~~/L~~]*** or COTA;

(b) Is authorized to take the NBCOT or equivalent exam required by KRS 319A.120; or

(c) Has requested an official NBCOT Score Transfer Report be sent to the board.

(4) The appropriate fee for licensure:

(a) Fifty (50) dollars for an OT/L; or

(b) Thirty-five (35) dollars for an OTA/L***; and***

(5) Evidence of sucessful completion of the jurisprudence exam[~~Successfully complete the jurisprudence exam~~]***[~~; and~~***

[~~(5) Evidence of successful completion of the NBCOT or equivalent exam~~].[~~Submit the appropriate fee for licensure as required by 201 KAR 028:110.~~]

Section 2. Temporary Licensure.

(1) An applicant for licensure may request a temporary permit by submitting the materials and fee required in ***Section 1(1) through 1(5) of this administrative regulation[~~subsections (1) through (5) of this section~~]*** and a completed Supervision Temporary Permit Form, Form OTB-2, signed by a licensed occupational therapist in good standing with the board.

(2) A temporary permit holder shall be licensed by the board upon successful completion of the ***jurisprudence[~~NBCOT or equivalent certification~~]*** exam.

(3) A temporary permit holder shall have the permit revoked upon two (2) unsuccessful attempts to pass the NBCOT***[~~or equivalent certification~~]*** exam.

Section 3.[~~2. Licensure of OTA/L. An applicant for licensure as an OTA/L that has not previously been licensed in any state shall meet the following requirements:~~

~~(1) Submit a completed OTA/L Application Form;~~

~~(2) Submit a certified copy of the applicant's official academic transcript indicating that the applicant has graduated from an occupational therapy assistant educational program approved by the ACOTE or its equivalent;~~

~~(3) Submit electronic verification by the NBCOT stating that the applicant meets the requirements of certification as a COTA;~~

~~(4) Successfully complete the jurisprudence exam; and~~

~~(5) Submit the appropriate fee for licensure as required by 201 KAR 028:110.~~

~~Section 3.~~] Reciprocal Licensure[~~of Persons Licensed, Certified, or Registered in Other States~~]. An applicant for licensure administered by the board[~~as an OT/L or OTA/L~~] that is or has been licensed, certified, or registered in another state shall submit[~~meet the following requirements~~]:

(1)[~~Submit~~] A completed[~~OT/L~~] Application Form, Form OTB-1[~~or OTA/L Application Form~~];

(2)[~~Submit~~] An official statement from the body responsible for licensure of occupational therapists in every jurisdiction in which the applicant has held a license or credential that the individual is in good standing in that jurisdiction;

(3)[~~Submit~~] A current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OTR or a COTA;

(4) Evidence of successful completion of[~~Successfully complete~~] the ***jurisprudence[~~NBCOT or equivalent~~]*** [~~jurisprudence~~] exam; and

(5)[~~Submit~~] The appropriate fee for licensure:

(a) Fifty (50) dollars for an OT/L; or

(b) Thirty-five (35) dollars for an OTA/L[~~as required by 201 KAR 028:110~~].

Section 4. License Renewal and Grace Period.

(1) An individual licensed by the board shall submit annually, on or before October 31:

(a) A completed Annual OT/OTA Renewal Application, Form OTB-3;

(b) The appropriate fee for renewal:

1. Fifty (50) dollars for an OT/L;

2. Thirty-five (35) dollars for an OTA/L; and

(c) Evidence of completion of twelve (12) continuing competence units.

(2) An individual licensed by the board fewer than (90) days prior to the annual renewal date shall not be required to renew during the first year of licensure.

(3) An individual licensed by the board who has failed to renew as required by subsection (1) of this section shall be granted a sixty (60) day grace period to submit:

(a) All items required by subsection (1) of this section; and

(b) A late renewal fee of twenty-five (25) dollars.

Section 5[~~4~~]. Expired and Inactive Licenses.

(1) A license not renewed by the conclusion of the grace period shall expire.

(2) The board shall send the individual holding a terminated license a notice of expiration with instructions to cease and desist the practice of occupational therapy.

(3) Pursuant to KRS 319A.160(10), a license may be placed in inactive status for up to three (3) years upon petition to the board on the Annual OT/OTA Renewal Application, Form OTB-3. An individual holding an inactive license shall submit annually on or before October 31:

(a) The Annual ***OT/OTA[~~License~~]*** Renewal Application, Form OTB-3; and

(b) An inactive renewal fee of ten (10) dollars.[~~Foreign-trained Applicants.~~

~~(1) An applicant for licensure as an occupational therapist who was trained at an educational facility in a country or nation other than the United States shall meet the following requirements:~~

~~(a) Submit a completed OT/L Application Form;~~

~~(b) Submit a current copy of the certificate issued by the NBCOT stating that the individual met the initial requirements for certification as an OTR or a COTA;~~

~~(c) Submit the appropriate fee for licensure as required by 201 KAR 028:110;~~

~~(d) Successfully complete the jurisprudence exam; and~~

~~(e) Submit evidence of legal permission, as furnished by the U.S. Department of Immigration and Naturalization, for employment in the United States as documented by:~~

~~1. An I-94 form;~~

~~2. An alien registration card;~~

~~3. A temporary resident card;~~

~~4. An NBCOT Visa Verification; or~~

~~5. A stamp on their passport.~~

~~(2) A foreign-trained applicant who is or has been licensed, certified, or registered in another jurisdiction of the United States shall comply with the requirements of Section 3(3) of this administrative regulation.~~]

Section 6[~~5~~]. License Reinstatement and Activation.

(1) An expired license shall be reinstated upon submission of:

(a) Completed***[~~License~~]*** Reinstatement Application, Form OTB-4;

(b) Late renewal fee of twenty-five (25) dollars;

(c) Reinstatement fee of seventy-five (75) dollars;

(d) Documentation of employment from time of expiration to present;

(e) Documentation of current or initial certification by NBCOT or its equivalent;

(f) Completion of NBCOT or equivalent exam; and

(g) Evidence of completion of continuing competence requirements pursuant to 201 KAR 028:200, Section 2(3).

(2) An inactive license shall be reactivated upon submission of:

(a) Written notification to the board of the licensee's intent to return to active status;

(b) Identification of the licensee's proposed place of employment;

(c) Reinstatement fee of seventy-five (75) dollars; and

(d) Evidence of completion of continuing competence requirements pursuant to 201 KAR 028:200, Section 2(3).[~~Incorporation by Reference.~~

~~(1) The following material is incorporated by reference:~~

~~(a) "OT/L Application Form", February 2015; and~~

~~(b) "OTA/L Application Form", February 2015.~~

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

Section 7. License Termination.

(1) A license not reinstated within five (5) years of expiration shall terminate.

(2) Terminated licenses shall not be eligible for reinstatement.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application Form", Form OTB-1, (***December[~~edition Sept~~]*** 2018);

(b) "Supervision Temporary Permit Form," Form OTB-2, (***September[~~edition Sept~~]*** 2018);

(c) "Annual OT/OTA Renewal Application," Form OTB-3 (***September[~~edition Sept~~]*** 2018);

(d) "Reinstatement Application", Form OTB-4; (***September[~~edition Sept~~]*** 2018)

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

STACY GRIDER, Chair

APPROVED BY AGENCY: October 8, 2018

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TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, December 11, 2018)

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) ***requires[~~authorizes~~]*** the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits may be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions.

(1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(4)[~~"At-large" means any portion of the elk zone not included in a limited entry area.~~

~~(5)~~] "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(5)[~~(6)~~] "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(6)[~~(7)~~] "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(7)[~~(8)~~] "Elk" means Cervus canadensis[~~elaphus~~] nelsoni.

(8)[~~(9)~~] "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(9)[~~(10)~~] "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.

(10)[~~(11)~~] "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11)[~~(12)~~] "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters into an agreement with the department to allow public access and hunting for at least five (5) years.

(12)[~~(13) "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.~~

~~(14)~~] "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(13)[~~(15)~~] "Out-of-zone" means all counties not included in the restoration zone.

(14)[~~(16)~~] "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(15) "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(16)[~~(17)~~] "Spike" means an elk having one (1) or two (2) antler points on each side.

(17) "Unit" means a designated area in the restoration zone with specific management restrictions.

(18) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(19) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued destruction tag to an elk prior to moving the carcass; and

(2) Not remove the destruction tag until the carcass is processed.

Section 3. Elk Quota Hunts.

(1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for[~~up to ten (10)~~] either-sex elk permits that[~~. These permits~~] shall be valid for use during all elk seasons[~~:~~

~~(a) Anywhere in the at-large portion of the restoration zone; or~~

~~(b) Within an LEA if the youth applies for and is drawn for an LEA~~], pursuant to Section 7(4) of this administrative regulation.

(6) A youth[~~applicant~~] shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for a regular quota hunt.[~~. The regular quota hunts shall be~~] as established in subsection (12) of this section.

(8) A youth[~~applicant~~] drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be three (3)[~~four (4)~~] separate regular elk quota hunts consisting of:

(a)[~~Antlered archery and crossbow;~~

~~(b)~~] Antlered firearms;

(b)[~~(c) Antlerless archery and crossbow; and~~

~~(d)~~] Antlerless firearms; and

(c) Either-sex archery and crossbow.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the three (3)[~~four (4)~~] quota hunt pools;

(c) Only be selected by a random electronic drawing; and

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at (800)[~~1-800-~~]858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits.

(1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 7 and 8 of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

(a) Name;

(b) Fish and Wildlife customer identification number[~~Social Security number~~];

(c) Address; and

(d) Telephone number.

(5) The landowner cooperator permit shall not be transferable if it was already used for the harvest of an[~~one (1)~~] elk.

(6) Public access agreements with the department shall be

recorded in writing.

Section 5. Voucher Cooperator Permits.

(1) A voucher cooperator shall accrue one (1) voucher point for each legally harvested elk.

(2) A voucher cooperator who accrues ten (10) total points on land enrolled pursuant to Section 1(18) of this administrative regulation shall receive one (1) either-sex elk permit from the department.

(3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 7 and 8 of this administrative regulation.

(4) A voucher cooperator elk permit shall only be used on:

(a) The property enrolled with the department per agreement; or

(b) Other property that the landowner or lessee owns or leases.

(5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.

(6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Fish and Wildlife customer identification number[~~Social security number~~];

(c) Address; and

(d) Telephone number.

(7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Elk Restoration Permits.

(1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue one (1) point for each captured elk.

(2) A landowner or lessee who accrues ten (10) total points shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.

(3) A recipient of an ERP shall comply with all the requirements established in Sections 7 and 8 of this administrative regulation.

(4) An ERP shall only be used on property that the ERP recipient owns or leases.

(5) An ERP recipient may transfer the permit to any person eligible to hunt in Kentucky.

(6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Address;

(c) Telephone number; and

(d) Fish and Wildlife customer identification number[~~Social security number~~].

(7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 7. Hunter Requirements.

(1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) If a legal elk hunter kills any elk, then:

(a) The person shall immediately cease hunting elk for the remainder of the elk season; and

(b) The[~~All~~] elk permit[~~permits~~] held by that individual shall immediately become invalid.

(4) A drawn hunter may apply to hunt in up to two (2) units[~~four (4) areas in any combination of the limited entry areas~~] by completing the application process on the department's Web site at fw.ky.gov.

(a) Up to three (3) drawn hunters may apply for their unit[~~LEA~~] choices as a party.

(b) If the party is drawn for a unit[~~the LEA~~], then all hunters in the party shall be assigned to that same unit[~~LEA~~].

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or be assigned to a unit by the department[~~to the at-large area~~].

(5) A drawn hunter who does not apply for a unit[~~an LEA or is not drawn for an LEA~~] shall be assigned to a unit by the department[~~the at-large area~~].

(6) A hunter drawn for a unit[~~an LEA~~] may hunt only in the assigned unit[~~LEA~~], except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(7) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(8) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 003:027 may use a stationary vehicle as a hunting platform.

(9) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(10) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

(11) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(12) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzleloader of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(13) A crossbow shall contain a working safety device.

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.

(15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the five (5)[~~seven (7)~~] day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperator permit, a voucher cooperator permit, an elk restoration permit, or a special commission permit may hunt in all of the[~~antlered-only or antlerless-only~~] quota hunts and shall hunt in accordance with the seasons,[~~and~~] limits, and weapons established in Section 7 of this administrative regulation.

(18)(a) [~~A person who is drawn for an archery or crossbow permit or has a landowner cooperator permit, a special commission permit, an elk restoration permit, or voucher cooperator permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:~~]

~~(a) Is a youth;~~

~~(b) Is sixty-five (65) years or older; or~~

~~(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 003:027.~~

~~(19)(a)~~] A person who is drawn for an elk quota hunt permit or was issued a landowner cooperator permit, a special commission permit, an elk restoration permit, or voucher cooperator permit shall complete and submit a post-season elk hunting survey on the department's Web site[~~website~~] at fw.ky.gov no later than the last day of February.

(b) A person who fails to comply with the requirements established in paragraph (a) of this subsection shall be ineligible to apply for any quota hunt or no-hunt option the following year.

Section 8. Elk Quota Hunt Seasons and Limits.

(1) A person drawn for an either-sex archery and crossbow permit shall use archery or crossbow equipment to take either-sex elk from the:

(a) Second Saturday in September through the fourth Friday in September; and

(b) First Saturday in December through the second Friday in December.

(2)[~~antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.~~

~~(2) A person drawn for an antlered archery and crossbow permit shall use:~~

~~(a) Archery equipment to take an antlered elk beginning the third Saturday in September through December 31; and~~

~~(b) A crossbow to take an antlered elk from the fourth Saturday in September through December 31.~~

~~(3) A person drawn for an antlerless archery and crossbow permit shall use:~~

~~(a) Archery equipment to take an antlerless elk beginning the second Saturday in October through December 31; and~~

~~(b) A crossbow to take an antlerless elk from the second Saturday in October through December 31.~~

~~(4)~~] A person drawn for an antlered firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation to take an antlered elk during one (1) of two (2) five (5)[~~seven (7)~~] day periods randomly assigned by the department from the:

(a) Last Saturday in September for five (5)[~~seven (7)~~] consecutive days; or

(b) First Saturday in October for five (5)[~~seven (7)~~] consecutive days.

(3)[~~(5)~~] A person drawn for an antlerless firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation to take an antlerless elk during one (1) of two (2) five (5) day[~~seven day (7)~~] periods randomly assigned by the department from the:

(a) Last[~~Second~~] Saturday in November[~~December~~] for five (5)[~~seven (7)~~] consecutive days; or

(b) Last[~~Third~~] Saturday in December for five (5)[~~seven (7)~~] consecutive days.

Section 9. Unit[~~LEA~~] Boundaries and Elk Viewing Areas.

(1) Hunting unit boundaries and the boundaries of the Appalachian Wildlife Center Viewing Area are incorporated by reference[~~Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary~~].

(2) Elk viewing areas shall be closed to all elk hunting[~~Levisa Fork LEA - Starting at the intersection of State Hwy 1789 and State Hwy 460 at Millard, the boundary proceeds south and east on Hwy 460 to the intersection of Hwy 460 and State Hwy 1499 at Mouthcard. The boundary then runs north along State Hwy 1499 to the intersection of State Hwy 1499 and State Hwy 194. It then runs west and north on Hwy 194 to the intersection of Hwy 194 and State Hwy 3418 (Ridge Line Road). The boundary then runs west on Hwy 3418 to the intersection of State Hwy 3418 and Raccoon Road. The boundary then runs west on Raccoon Road to the intersection of Raccoon Road and State Hwy 1441. The boundary then runs south along Hwy 1441 to the intersection of State Hwy 1441 and State Highway 1789. The boundary then runs west to the intersection of Hwy 1789 and State Highway 460, completing the boundary.~~

~~(3) Middlesboro LEA - Starting at the intersection of US Hwy 25E and the Tennessee border at Middlesboro, the boundary proceeds southward and westward on the Tennessee and Kentucky border until the intersection of State Hwy 190. The boundary proceeds northward and westward on State Hwy 190 to the intersection of US Hwy 25E. The boundary then goes south on US Hwy 25E to the Tennessee border, completing the boundary.~~

~~(4) Prestonsburg LEA - The area shall be within the boundary of the Czar Hunter Access Area as indicated by signage.~~

~~(5) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.~~

~~(6) Tug Fork LEA – The area shall be within the boundary of the Revelation Energy Hunter Access Areas in Martin, Pike, and Floyd Counties, as established by signage~~].

Section 10. Post-season Quota Hunt on Private Land.

(1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

(a) Were not drawn for the previous elk quota hunts; and

(b) Are residents of counties included, wholly or in part, within an EMU boundary.

(3) A drawn applicant shall comply with the requirements in Section 7 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) The EMU boundaries shall be as incorporated by reference in this administrative regulation.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 11. Tagging and Checking Requirements.

(1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

1. Head;[~~or~~]
2. Udder or vulva attached to the carcass; or
3. Testicles, scrotum, or penis attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:
(a) Confirmation number;
(b) Name; and
(c) Telephone number.
(6) A person shall not provide false information in:
(a) Completing the hunter's log;
(b) Checking an elk; or
(c) Creating a carcass tag.

Section 12. Elk Hunting on Public Land.
(1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:
(a) Wildlife Management Areas;
(b) Hunter Access Areas;
(c) State forests;
(d) Big South Fork National River and Recreation Area;
(e) Daniel Boone National Forest; or
(f) Jefferson National Forest.
(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 13 of this administrative regulation.
(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.
(4) Paul Van Booven WMA and Fishtrap Lake WMA shall be designated as an elk viewing area and shall be closed to all elk hunting.[~~(a) The archery and crossbow seasons shall be open as established in Section 8 of this administrative regulation.~~
~~(b) A firearm shall not be used to hunt elk.~~]
(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 13. Out-of-zone Elk Hunting.
(1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the weapons and ammunition requirements established in Section 7 of this administrative regulation.
(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:
(a) A valid Kentucky hunting license; and
(b) An out-of-zone elk permit.
(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.
(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11 of this administrative regulation.

Section 14. Elk Antlers.
(1) A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours[~~to obtain a disposal permit~~].
(2) An elk shed shall be legal to possess.

Section 15. Elk Permit Deferral. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:
(1) There is a death of the permit holder's:
(a) Spouse;
(b) Child; or
(c) Legal guardian, if the permit holder is under eighteen (18) years old; and
(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:
(a) A marriage certificate;
(b) A birth certificate; or
(c) An affidavit of paternity or maternity.

Section 16. Incorporation by Reference.
(1) The following material is incorporated by reference:
(a) "Knott-Floyd Elk Management Unit 2017 Edition" map;[~~and~~]
(b) "Mayking Letcher Elk Management Unit 2017 Edition" map;
(c) "Elk Hunting Units" map, 2019 edition; and
(d) "Appalachian Wildlife Center Viewing Area" map, 2019 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, 8:00[~~8~~] a.m. to 4:30 p.m., Eastern Time.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: October 11, 2018
FILED WITH LRC: October 15, 2018 at 9 a.m.
CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 11, 2018)

401 KAR 052:070. Registration of air contaminant [~~designated~~] sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 60, 61, and 63
STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes[~~requires~~] the [~~Environmental and Public Protection~~] cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. [~~There is no federal mandate for this administrative regulation.~~] This administrative regulation establishes the procedure for the registration of [~~designated~~] air contaminant sources in Kentucky.

Section 1. Applicability.
(1) This administrative regulation shall apply to:
(a) A source[~~(1) Sources~~] that has[~~emit or have~~] the [~~potential to emit~~ {]PTE[}]:
1.[~~(a)~~] Two (2) tpy or more but less than ten (10) tpy of a HAP;
2.[~~(b)~~] Five (5) tpy or more but less than twenty-five (25) tpy of combined HAPs;***[~~or~~]***
3. Ten (10) tpy or more but not more than twenty-five (25) tpy of a regulated air pollutant subject to an applicable requirement that does not specify the method for achieving compliance;
4. Ten (10) tpy or more but less than 100 tpy of a regulated air pollutant subject to an applicable requirement that clearly specifies the method of compliance; or
5. Ten (10) tpy or more but less than 100 tons per year of a regulated air pollutant for which there is no applicable requirement[~~More than five (5) tpy but less than twenty-five (25) tpy of a regulated air pollutant that is not a HAP~~]; or
(b) A source[~~(c) For other regulated air pollutants:~~
~~1. Ten (10) tpy or more but less than twenty-five (25) tpy of a pollutant subject to an applicable requirement that does not specify the method for achieving compliance;~~
~~2. Ten (10) tpy or more but less than 100 tpy of a pollutant subject to an applicable requirement that clearly specifies the method of compliance; or~~
~~3. Ten (10) tpy or more but less than 100 tons per year of a~~

~~pollutant for which there is no applicable requirement; or~~

~~(2) Sources~~] that has the potential to emit less than the cutoffs ***established*** in paragraph (a) of this subsection [~~(1) of this section~~] but is[~~are~~] subject to an applicable requirement in 40 C.F.R. Parts 60, 61, or 63.

(2) This administrative regulation shall not apply to:

(a) A source required to be permitted pursuant to 401 KAR 052:020, 401 KAR 052:030, or 401 KAR 052:040; or

(b) A source exempt pursuant to Section 2 of this administrative regulation.

Section 2. Exemptions.

(1) The following sources shall be exempt from this administrative regulation:

(a) A source[~~Sources that are required to be permitted under 401 KAR 052:020, 401 KAR 052:030, or 401 KAR 052:040;~~

~~(b) Sources~~] that emits[~~emit~~] only nonprocess fugitive emissions;

(b) A source[~~(c) Sources~~] subject only to the requirements of 40 C.F.R. 60.530 to 60.539b, (Subpart AAA), Standards of Performance for New Residential Wood Heaters;

(c) A source subject only to the requirements of 40 C.F.R. 60.5472 to 60.5483, (Subpart QQQQ), Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces; or

(d) A sawmill that produces[~~Sawmills that produce~~] only rough-cut or dimensional lumber from logs and **that[~~which~~]** has[~~have~~] a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an applicable requirement in 40 C.F.R. Part 60 or 401 KAR Chapters 59 or 61.

(2) The following activities shall be exempt from this administrative regulation:

(a) **Use of** a vehicle[~~Vehicles~~]**[~~used~~]** for the transportation of passengers or freight;

(b) Use of a publicly-owned road[~~roads~~];

(c) An asbestos demolition or renovation operation[~~operations~~] subject only to an applicable requirement in 401 KAR Chapter 58;

(d) An open burning covered under 401 KAR 63:005; or[~~and~~]

(e) An activity[~~Activities~~] or emission unit[~~units~~] contained in the **["]**List of Trivial Activities**["]**, which the cabinet shall maintain and make available:

1. On request by calling the Division for Air Quality, Permit Support Section, at (502) 564-3999; and

2. On the Internet at: http://air.ky.gov.

Section 3. General Provisions.

(1) A source[~~Sources that are~~] subject to this administrative regulation shall:

(a) Register with the cabinet;

(b) Comply with all applicable requirements; and

(c)1. Allow an authorized representative[~~representatives~~] of the cabinet to enter the premises at all reasonable times **to**:

a.**[~~To~~]** Access and copy any records required by this administrative regulation;

b.**[~~To~~]** Inspect any facility, equipment (including air pollution control equipment), practice, or operation; and

c.**[~~To~~]** Sample or monitor substances or parameters to determine compliance with applicable requirements.

2. Reasonable times shall be:

a. During all hours of operation;

b. During normal office hours; or

c. During an emergency.

(2) A source[~~Sources~~] that is[~~are~~] located in an ozone nonattainment area or ozone maintenance area that**[~~is subject to this administrative regulation and~~]** has[~~areas and emit or have~~] the potential to emit **twenty-five (25) tpy or more of**[~~twenty-five (25) tpy or more of~~] VOC or NO_x shall submit an annual emission certification as follows:

(a) During the first quarter of each calendar year, the cabinet shall survey the source[~~these sources~~] to determine [~~their~~] actual emissions during the preceding calendar year and the source shall:

1. Make the appropriate additions or corrections to the survey; **and**

2. Return the updated survey to the cabinet within thirty (30) days of the date that the survey is mailed to the source. For this response:

a. Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation; **and**

b. If no response is received by the deadline, the cabinet shall estimate the actual emissions based on prior history and other relevant information that is available; and

(b) Failure of the cabinet to notify a source under this subsection shall not relieve the source from the obligation to submit an emissions statement.

(3) The cabinet may require registered sources to demonstrate compliance with applicable requirements.

Section 4. When to Apply for Registration[~~Register~~].

(1) New sources. A source[~~Sources~~] that commences[~~commence~~] construction after the effective date of this administrative regulation shall submit a complete application[~~a registration form~~] to the cabinet prior to commencing construction.

(a) A source may commence construction immediately upon submittal of a complete application, as required by Section 7 of this administrative regulation[~~registration form~~].

(b) The cabinet shall review the application[~~registration form~~] and shall notify the source within sixty (60) days of receipt that:

1. A permit or registration is not required;

2. The application[~~registration~~] as submitted is accepted, and the source is a registered source; or

3. The source is required to obtain a permit and is required to take the specified action.

(2) Existing registered sources. A source[~~Sources~~] that is[~~are~~] registered with the cabinet and plans[~~plan~~] to reconstruct or modify shall comply with the following:

(a) A source[~~Sources~~] that remains[~~remain~~] eligible for registration after the change:

1. Shall submit a complete application, as established in Section 7 of this administrative regulation,[~~a registration form~~] to the cabinet prior to commencing reconstruction or modification; and

2. May commence reconstruction or modification immediately upon submittal of the complete application**; or**[~~registration form~~]

(b) A source[~~Sources~~] that is[~~are~~] not eligible for registration after the change shall:

1. Submit a complete[~~an~~] application pursuant to[~~under~~] 401 KAR 052:020, 401 KAR 052:030, or 401 KAR 052:040, as applicable; and

2. Obtain the appropriate permit prior to commencing reconstruction or modification.

Section 5. Application[~~Registration~~] at the Cabinet's Request.

(1) Upon request by the cabinet, a source that has commenced construction or operation without a permit or registration shall submit a complete application[~~a registration form~~] within thirty (30) days of request.

(2) The cabinet shall review the application[~~registration form~~] and within sixty (60) days of receipt:

(a) Shall notify the source that a permit or registration is not required; or

(b) If a permit or registration is required, shall specify the action the source is required to take, and may issue a notice of violation.

Section 6. Rescinding an Existing Permit.

(1) A source that has a permit and is eligible for registration may request that the cabinet rescind its permit by submitting:

(a) A complete application, as established in Section 7 of this administrative regulation[~~registration form~~]; and

(b) A letter requesting the cabinet to rescind the permit, along with supporting documentation that provides evidence that the source **complies with[~~meets~~]** the requirements for registration.

(2) The cabinet shall review the request and shall notify the source within sixty (60) days of receipt that **the request is**:

(a) **[~~The request is~~]** Approved and the permit has been rescinded; or

(b) **[~~The request is~~]** Denied and shall specify the reason for denial and any action the source is required to take.

Section 7. How to Apply for Registration[~~Register~~].

(1) Application[~~Registration~~] shall be made using the applicable forms DEP7007AI through DEP7007HH, incorporated by reference in 401 KAR 052:050.

(2) Complete applications shall be submitted to the Kentucky Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601.[~~:~~

~~(a) Form DEP7039A, which is incorporated by reference in Section 8 of this administrative regulation; or~~

~~(b) Form DEP7105 for gasoline dispensing facilities which are subject to 401 KAR 59:174.~~

~~(3) Completed registration forms shall be submitted to Kentucky Division for Air Quality, Attn: EIS Section, 300 Sower Boulevard, Frankfort, Kentucky 40601.~~

~~Section 8. Incorporation by Reference. (1) "Form DEP7039A, Minor Source Registration", May 2000, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:~~

~~(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666;~~

~~(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;~~

~~(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;~~

~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 564-3999;~~

~~(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;~~

~~(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;~~

~~(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;~~

~~(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and~~

~~(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 15, 2018 at noon

CONTACT PERSON: Cassandra Jobe, Supervisor, Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-6670, fax (502) 564-4245, email cassandra.jobe@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
(As Amended at ARRS, December 11, 2018)

500 KAR 3:020. Filing and processing SLPO commissions.

RELATES TO: KRS 61.300, 61.360, 61.990[~~61.991~~], 62.010, 62.990

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 61.360 authorizes the Governor or his agent to appoint Special Local Peace Officers. This administrative regulation establishes the procedure for applying for a commission as a Special Local Peace Officer.

Section 1. Qualifications to Apply for Commission as a Special Local Peace Officer. To qualify for a commission as a SLPO, an applicant shall present satisfactory evidence of compliance with the conditions and requirements ***established[~~set forth~~]*** in KRS 61.360.

Section 2. Application for Commission as a Special Local Peace Officer. Applications from the property owner shall be sent to the cabinet SLPO program administrator and shall comply with the following requirements:

(1) An applicant shall meet all of the requirements of KRS 61.360 before a commission ***is[~~shall be~~]*** granted. An applicant who qualifies may hold additional commissions for different property locations.

(2) The applicant shall complete two (2) notarized "SLPO Application Candidate Information (SLPO-1)" forms, which shall include the following:

(a) The name of the property owner;

(b) The name, address, date of birth, and Social Security number of the applicant and a detailed personal description;

(c) A certified copy of the applicant's birth certificate;

(d) Two (2) photographs of the applicant, which shall be:

1. Full face;

2. At least three (3) inches by five (5) inches in size; and

3. Taken within thirty (30) days prior to submission of the application;

(e) A copy of the applicant's military discharge or Form DD-214, if the applicant is a veteran;

(f) The signature of the property owner;

(g) A statement of all arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies; and

(h) The notarized signature of the applicant.

(3) The ten (10) dollar application fee shall be:

(a) Submitted with the application form;

(b) Nonrefundable; and

(c) Submitted by check or money order made payable to the Kentucky State Treasurer.

(4) Submission of any false or misleading information or the withholding of information requested on the application or by the cabinet investigator[~~,~~] may be grounds for rejection without further consideration.

(5) If not on file from a previous application, an applicant shall be fingerprinted at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601.

(6) The application shall also contain the Authority to Release Information Form (SLPO-4) to allow the release of all necessary information to the SLPO program administrator. It shall be signed by the applicant and notarized or may be witnessed by a cabinet official.

(7) The applicant shall also sign the SLPO Acknowledgment Notice Form (SLPO-5) which indicates that:

(a) He has received, read, and understands:

1. KRS 61.300;

2. KRS 61.360;

3. KRS 61.991;

4. KRS 62.010;

5. KRS 62.990; and

6. The administrative regulations in 500 KAR Chapter 3;

(b) He acknowledges that his authority is limited and restricted under the SLPO Act, cited in paragraph (a) of this subsection; and

(c) He understands and acknowledges that his commission as a SLPO does not give him the right or authority to carry a concealed weapon off the premises of the said property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110.

(8) A Letter of Intent Form (SLPO-3) shall be filed with each application by the property owner giving the name of applicant and the specific private property to be protected. This letter shall accompany the application forms for SLPO initial application or renewals.

(9) The applicant shall arrange for an interview with the SLPO program administrator.

(10) If the application is defective or in conflict with the SLPO Act, cited in subsection (7)(a) of this section or 500 KAR Chapter 3,

the application shall be returned to the property owner. An application may be corrected and resubmitted at no additional cost if it is resubmitted within sixty (60) days of the date the applicant is sent notice of the deficiencies by the program administrator.

Section 3. The Grant of the Commission and the Required Oath of Office. A commission for a special local peace officer shall be validated and granted as follows:

(1) If the applicant has successfully satisfied the requirements of the statutes cited in Section 2(7)(a) of this administrative regulation, a commission certificate and a Special Local Peace Officer Recommendation of Background Investigator (SLPO-2) form shall be forwarded by the SLPO program administrator to the secretary or the secretary's designee for review. After the commission is issued by the secretary or the secretary's designee, a copy of the commission shall be placed in the officer's file.

(2) If a commission is granted:

(a) The commission, one (1) application, and two (2) County Clerk Oath forms (SLPO-6) shall be forwarded by the cabinet to the property owner.

(b) The appointed applicant shall promptly take the application and the two (2) County Clerk Oath forms to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty (30) days after notice of appointment.

(c) The county clerk shall then complete and sign the clerk's attestation on both County Clerk Oath forms and retain the application and one (1) of the County Clerk Oath forms for filing purposes in the county clerk's office.

(d) The applicant shall return the second County Clerk Oath form signed by the clerk to the property owner.

(e) The property owner shall then return the second County Clerk Oath form to the cabinet SLPO program administrator to indicate that the oath was administered and that the application and one (1) of the County Clerk Oath forms are filed with the county clerk.

(f) The property owner shall be allowed thirty (30) days to arrange for the appointed applicant to take the oath of office and return the second County Clerk Oath form is to the cabinet SLPO program administrator. If the County Clerk Oath form not returned within thirty (30) days, the commission shall be revoked in accordance with KRS 62.010 and 62.990.

(g) The commission certificate shall be kept by the property owner so long as the officer is employed or until his authority is terminated by action of the property owner, the cabinet secretary, or the cabinet secretary's designee[~~secretary~~].

(3) A SLPO Commission shall be issued for a period of two (2) years, if the officer continues to meet all statutory and regulatory criteria.

(4) After the SLPO officer has taken the constitutional oath of office, the property owner shall issue an identification card ***that shall[~~which is to~~]*** be carried by the SLPO officer whenever he is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or cabinet official and is subject to control by the cabinet. If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer by the property owner or the cabinet, he shall immediately return this identification card to the officer's property owner.

(5) A notice shall be forwarded to the property owner concerning any officer whose appointment has been suspended or revoked by the secretary or the secretary's designee. The property owner shall maintain current files and make renewal applications at least sixty (60) days prior to the commission's expiration date.

(6) The applicant shall not exercise the authority of a SLPO until the property owner has received the commission certificate from the cabinet.

(7) The SLPO commission certificate shall be held by the property owner and shall be available for inspection by the cabinet program administrator or his designee. The commission certificate remains the property of the cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Denial of an Application. (1) If an application for commission as a SLPO is denied, the applicant and property owner may appeal the determination in accordance with KRS Chapter 13B. An appeal shall be filed:

(a) In writing with the secretary or the secretary's designee; and

(b) Within thirty (30) days of the date of the written notice that the application has been denied.

(2) An applicant who is denied a commission shall not submit another SLPO application for***[~~a period of~~]*** at least one (1) year.

Section 5. Renewals. A Letter of Intent Form (SLPO-3) from the property owner stating a request to renew a commission and two (2) complete signed and notarized SLPO Renewal Application Forms (SLPO-7) for each applicant involved shall be filed with the cabinet program administrator at least sixty (60) days before the expiration date of the existing commission. The applicant for renewal shall undergo a new background investigation to bring his records up-to-date.

Section 6. Records, Reports and Responsibility. Each property owner employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:

(1) The property owner shall keep the individual officer's commission certificates on file, to be returned to the cabinet upon termination of the officer's employment.

(2) The property owner shall post a copy of 500 KAR Chapter 3 and a copy of KRS 61.360 and 61.990 in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLPO officers.

(3) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner whose private property is being protected by the SLPO officer involved. However, the property owner shall notify the cabinet SLPO program administrator by direct verbal communication within twenty-four (24) hours of any reported incident involving any act as enumerated in KRS 61.360(1)(c) by any of its SLPO officers. A written report shall be filed with the SLPO program administrator, within thirty (30) days of the original oral report, ***stating[~~setting forth~~]*** the details of the incident and listing any action taken by the property owner. If formal charges are pending, the property owner shall advise the SLPO program administrator as to all specific charges, trial dates, and the final disposition of all charges.

(4) The property owner shall mail or e-mail to the SLPO program administrator by June 30 of each year:

(a) A current list of all active SLPO personnel; and

(b) The number of arrests made or citations issued by the SLPO the previous calendar year.

(5) The property owner shall issue each SLPO officer an identification card upon the individual's appointment. The identification card shall be:

(a) Encased in plastic;

(b) Billfold size 2 1/4 in. x 3 1/2 in.; and

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card has been commissioned as a Special Local Peace Officer (SLPO), pursuant to KRS 61.360. As a SLPO, the holder of this card is deemed to be a peace officer within the meaning of KRS 527.020 and may exercise the limited powers of a peace officer granted by KRS 61.360"; and

2. The other side containing a full-faced photograph of the officer with his or her:

a. Name;

b. Identification or notation that the officer has been commissioned a "Special Local Peace Officer";

c. Property owner employing the officer;

d. Badge number, if any; and

e. Signature of the officer's property owner.

(6) The property owner shall be responsible for obtaining and destroying the identification card from any officer whose employment is terminated.

(7) If the bond required by KRS 61.360 is cancelled or revoked, the property owner shall notify the cabinet of this fact and the

reason for cancellation or revocation.

Section 7. Violations. A property owner utilizing SLPO's shall be subject to inspection and investigation by the cabinet for possible violations. Violations may result in prosecution and recommendation to the secretary or the secretary's designee that the commission affected be revoked.

Section 8. Revocation or Suspension of SLPO Commissions.

(1) If it is determined by the program administrator that KRS 61.360(1) of the SLPO Act applies to ***an[any]*** active SLPO commissioned officer, the program administrator shall notify the secretary or the secretary's designee who shall revoke or suspend the commission of any special local peace officer, after an administrative hearing conducted in accordance with KRS Chapter 13B, if he determines:

(a) That the commission-holder does not meet, or no longer meets the requirements and conditions for the commission;

(b) That the commission-holder has knowingly falsified an application or portion thereof, or has knowingly made any false or misleading statement of a material fact to the cabinet; or

(c) That the commission-holder has violated any of the Kentucky Revised Statues or administrative regulations cited in Section 2(7)(a) of this administrative regulation, or order of the secretary or the secretary's designee.

(2) Upon revocation or suspension the SLPO program administrator shall notify the property owner involved to return the commission of the SLPO officer involved to the SLPO program administrator for the cabinet. The property owner responsible for the SLPO officer shall forward a letter to the SLPO officer involved stating that his commission has been revoked or suspended and that he shall immediately return the SLPO identification card to the property owner.

(3) The secretary or the secretary's designee may temporarily suspend the commission of an SLPO prior to holding a hearing pursuant to KRS Chapter 13B if he believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the secretary or the secretary's designee shall hold a KRS Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLPO requests an extension for a time certain. If the SLPO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(4) The program administrator shall notify the county clerk in the officer's county of jurisdiction if a SLPO officer's commission has been surrendered, suspended, or revoked.

Section 9. Procedures for Investigating Complaints or Unusual Incidents Involving SLPO Officers.

(1) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner whose private property is being protected by the SLPO officer involved. The property owner shall ***notify[be responsible for notification to]*** the cabinet of all incidents involving their SLPO personnel as indicated in Section 6 of this administrative regulation.

(2) The cabinet program administrator or other assigned officers may investigate any complaints or unusual incidents involving a SLPO officer if there is reason to believe the provisions of KRS 61.360 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLPO officer involved.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "SLPO Application Candidate Information Form (SLPO-1)", July 1, 2010;

(b) "Special Local Peace Officer Recommendation of Background Investigator Form (SLPO-2)", May 8, 2008;

(c) "Letter of Intent Form (SLPO-3)", July 28, 2008;

(d) "Authority to Release Information Form (SLPO-4)", July 28, 2008;

(e) "SLPO Acknowledgment Notice Form (SLPO-5)", April 29, 2009;

(f) "County Clerk Oath" Form (SLPO-6), July 1, 2010; and

(g) "SLPO Renewal Application Form (SLPO-7)" July 1, 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

JOHN C. TILLEY, Secretary

APPROVED BY AGENCY: October 10, 2018

FILED WITH LRC: October 15, 2018 at 10 a.m.

CONTACT PERSON: Julie Foster, Attorney, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, email Justice.RegsContact@ky.gov, phone (502) 564-3279, fax (502) 564-6686.

TRANSPORTATION CABINET
Department of Highways
Division of Planning
(As Amended at ARRS, December 11, 2018)

603 KAR 005:070. Motor vehicle dimension limits.

RELATES TO: KRS [~~186.050,~~] 186.655, 189.222, 23 C.F.R. Part 658, 23 U.S.C., 49 U.S.C. 31111, Pub. L. 114-94

STATUTORY AUTHORITY: KRS 189.222[~~(1), (9)~~], 23 C.F.R. Part 658

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.222(11) authorizes the Transportation Cabinet[~~Secretary of Transportation~~] to promulgate administrative regulations implementing the provisions of 23 C.F.R. Part 658 relating to the length, width, and weight limitations of motor vehicles travelling on the Commonwealth's state primary road system. This administrative regulation establishes the dimensions and the dimension combinations for motor vehicles travelling on all classes of highways in Kentucky. This administrative regulation also establishes the regulatory provisions relating to The Fixing America's Surface Transportation Act, or the FAST Act, Pub. L. 114-94[~~establish reasonable size limits for motor vehicles using the State Primary Road System, which includes the roads maintained by the Department of Highways. 23 C.F.R. 658.19 requires that vehicles with increased dimensions transporting household goods and truck tractors towing only one (1) semitrailer not exceeding twenty-eight (28) feet (8.53 meters) in length be provided statewide access unless a route is specifically excluded for safety reasons. This administrative regulation establishes the motor vehicle and combination vehicle dimensions for all classes of highways in Kentucky. 23 C.F.R. Part 658 sets forth the highways available for use by vehicles with increased dimensions. This administrative regulation includes these highways as well as others which have been constructed to accommodate the motor vehicles with increased dimensions. In addition, 23 C.F.R. 658.19 requires each state to allow the increased dimension vehicles to operate within one (1) driving mile (1.61 kilometers) of the designated highways. On state-maintained highways in Kentucky, the increased dimension vehicles are allowed to operate within five (5) driving miles (8.05 kilometers) of a designated highway unless the designated highway is an interstate or a parkway in which instance the increased dimension vehicles are allowed to operate within fifteen (15) miles (24.14 kilometers) of the interstate or parkway exit. The bus dimension limits are established in 603 KAR 005:071~~].

Section 1. Definitions.

(1) "Enforcement tolerance" means an amount, usually expressed as a percentage of the total length, width, or weight measurement allowed in excess of the maximum to account for the

differences in measuring equipment or techniques.

(2) ***"Length exclusion safety device" means an appurtenance:***

(a) That is located at the front or rear of a motor vehicle semitrailer or trailer;

(b) With a function related to the safe and efficient operation of a motor vehicle semitrailer or trailer; and

(c) That is not designated, designed, or used for carrying cargo.

(3)"National Truck Network" means a network of highways on which motor vehicles with increased dimensions could operate pursuant to the Surface Transportation Assistance Act of 1982, 23 U.S.C.

(4)[~~(3)~~] "Stinger-steered" means an automobile or boat transporter configured as a semitrailer combination in which the fifth wheel is located on a drop frame behind and below the rear-most axle of the power unit.

(5)[~~(4)~~] "Towaway trailer transporter combination" means the combination of a trailer transporter towing unit and two (2) trailers or semitrailers, with a total weight that does not exceed 26,000 pounds and does not carry the property or constitute the inventory property of the manufacturer, distributor, or dealer of the trailers or semitrailers.

(6)[~~(5)~~] "Trailer transporter towing unit" means a power unit that is not used to carry property if operating in a towaway trailer transporter combination.

(7)[~~(6)~~] "Width exclusion safety device" means an addition or appurtenance located at the side of a motor vehicle, semitrailer, or trailer with a function related to the safe and efficient operation of the vehicle and not designated, designed, or used for carrying cargo.

Section 2. Width Exclusion Safety Devices.

(1) Items designated as width exclusion safety devices shall include:

(a) Rearview mirrors;

(b) Turn signal lamps;

(c) Hand holds for cab entry or egress;

(d) Splash and spray suppressant devices; and

(e) ***Load-induced[~~Load induced~~]*** tire bulges.

(2) The following items shall be designated as width exclusion safety devices if they do not extend beyond three (3) inches (0.0762 meter) on either side of the vehicle:

(a) Corner caps;

(b) Rear or side door hinges and their protective hardware;

(c) Rain gutters;

(d) Side marker lamps;

(e) Lift pads for a piggyback trailer;

(f) Hazardous materials placards;

(g) Tarp and tarp hardware;

(h) A tie-down assembly on a platform trailer;

(i) Wall variation from true flat; and

(j) Weevil pins or sockets on a low bed trailer.

Section 3. Dimensions of Vehicles.

(1) The maximum dimensions for a motor vehicle or combination motor vehicle shall be:

(a) A height, including body and load, not to exceed thirteen (13) feet and six (6) inches (4.115 meters);

(b) A width, including body and load, not to exceed eight (8) feet (2.44 meters), excluding a width exclusion safety device;

(c) Except as established in subsection (2) of this section, a length not exceeding forty-five (45) feet (13.716 meters) of a single unit motor vehicle, including a part of the body or load, but excluding a length exclusion safety device; and

(d) Except as established in subsection (2) of this section, a length not exceeding sixty-five (65) feet (19.812 meters) of a motor vehicle and trailer or semitrailer combination, including a part of the body or load, and excluding a length exclusion safety device.

(2) The***[~~following~~]*** exceptions ***established in paragraphs (a) through (d) of this subsection*** shall be made to the lengths established in (1)(c) and (d) of this section***.[~~:~~]***

(a) A truck trailer or semitrailer unit that is configured as a motor vehicle or boat transporter shall not have a load overhang of more than three (3) feet (0.915 meters) on the front and four (4) feet (1.22 meters) on the rear, if hauling only motor vehicles or boats. The overhangs shall not be included in the sixty-five (65) feet (19.812 meters) length limit established in (1)(d) of this section.

(b) A truck tractor or semitrailer unit that is configured as a stinger-steered motor vehicle or boat transporter shall not have a load overhang of more than four (4) feet (1.22 meters) on the front and six (6) feet (1.83 meters) on the rear, if hauling only motor vehicles or boats. The overhangs shall not be included in the measurement of the eighty (80) feet (24.384 meters) overall length limit.

(c) A single unit motor vehicle transporting utility poles or pipes shall not exceed forty-five (45) feet (13.716 meters).

(d) A towaway trailer transporter combination shall not exceed eighty-two (82) feet (24.994 meters).

Section 4. Exceptions to Permit Requirement.

(1) With the exception of buses, a motor vehicle or a combination motor vehicle with dimensions greater than those established in Section 3 of this administrative regulation may be operated without an overweight or overdimensional permit on the following highways:

(a) The National Truck Network;

(b) The fifteen (15) mile (24.14 kilometers) access established in KRS 189.222(1)(f);

(c) The five (5) mile (8.05 kilometers) access established in Section 5(2) of this administrative regulation; and

(d) The one (1) mile (1.61 kilometers) access established in Section 5(3) of this administrative regulation.

(2) If operating on the National Truck Network, a motor vehicle, combination motor vehicle, or towed unit, including a part of the body and load***[~~,~~]*** and excluding a length or width exclusion safety device, shall require an overdimensional permit if the width and length dimensions exceed***[~~the following~~]***:

(a) A width of 102 inches (2.59 meters);

(b) A towed unit length of fifty-three (53) feet (16.154 meters) if operated in a single semitrailer combination; or

(c) Twenty-eight (28) feet (8.53 meters) if operated in a tractor-semitrailer-trailer combination or a tractor-semitrailer-semitrailer combination not exceeding two (2) towed units per combination.

(3) In a tractor-semitrailer combination vehicle if the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer allowing for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length.

(4) If a second semitrailer is not mounted to the fifth wheel of the rear frame of a semitrailer, the length of the extension shall be included in the length measurement of the semitrailer.

(5) The gross vehicle weight limit for a motor vehicle with the dimensions established in this subsection, and operating on a highway included in the National Truck Network, shall be 80,000 pounds (36,287.36 kilograms).

(6) The dimensions and weights established in this section shall not be subject to an enforcement tolerance.

Section 5. Increased Dimensions.

(1) Motor vehicles with increased dimensions that do not exceed the limitations established in Section 4 of this administrative regulation may travel the highways included in the National Truck Network.

(2) A motor vehicle with an increased dimension pursuant to Section 4 of this administrative regulation may travel up to five (5) driving miles (8.05 kilometers) on a state-maintained highway from a highway segment established as part of the National Truck Network, and up to fifteen (15) miles (24.14 kilometers) from an interstate or parkway exit, to attain reasonable access to a terminal or facility for food, fuel, repairs, or rest.

(3) A motor vehicle with an increased dimension pursuant to Section 4 of this administrative regulation may travel up to one (1) driving mile (1.61 kilometers) on a nonstate maintained, public-

owned and public use highway from a National Truck Network highway to attain reasonable access to a terminal or facility for food, fuel, repair, or rest.

Section 6. (1) Household Goods Transporters. A motor vehicle with an increased dimension as established in Section 4 of this administrative regulation that is certified by either the Federal Motor Carrier Safety Administration or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. A truck tractor and single semitrailer that do not exceed twenty-eight (28) feet excluding a length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.

Section 7. Nonstate Maintained Exceptions.

(1) The city of Anchorage in Jefferson County, Kentucky has adopted ordinances that exempt due to safety reasons certain locally maintained roadways from the automatic one (1) mile (1.61 kilometers) access provision of Section 5(3) of this administrative regulation.

(2) The following streets located within the corporate city limits of Anchorage and listed in the city ordinance shall not be used by a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation:

(1) Evergreen Road;

(2) Bellewood Road;

(3) Lucas Lane; and

(4) Old Harrods Creek Road.

Section 8. State Maintained Exceptions.

(1) Based on safety concerns to the travelling public, specific road segments shall be exempt from the five (5) mile (8.05 kilometers) and fifteen (15) mile (24.14 kilometers) automatic access on a state maintained highway.

(2) The following road segments shall not be used by a vehicle with increased dimensions pursuant to Section 4 of this administrative regulation:

(a) Kentucky Highway 146 from the west boundary of the city of Anchorage in Jefferson County, beginning at the junction with Old Harrods Creek Road at milepoint 4.198 to the east boundary of the city of Anchorage at milepoint 5.784;

(b) Kentucky Highway 418 from milepoint 2.864 at the intersection with the Blue Sky Parkway, just southeast of the I-75 interchange in Fayette County, to milepoint 6.089 at the Fayette and Clark County line;

(c) Kentucky Highway 1973 in Fayette County from milepoint 0.000 at the intersection with U.S. 25 to milepoint 1.866 at its intersection with Kentucky 418; and

(d) U.S. 119 from its junction with Kentucky Highway 932 (Mile point 8.837) northeast of Oven Fork, to Kentucky Highway 15 (Milepoint 15.772) in Whitesburg, Letcher County, Kentucky.

(3) The list of state maintained and non state maintained exempted road segments established in subsection (2) of this section may be located on the cabinet's Web site at https://transportation.ky.gov/planning/pages/national-truck-network.aspx, or at the Transportation Cabinet, Division of Planning, 200 Mero Street, Frankfort, Kentucky 40622.[~~"Length exclusion safety device" means an appurtenance:~~

~~(a) That is located at the front or rear of a motor vehicle semitrailer or trailer;~~

~~(b) Whose function is related to the safe and efficient operation of the semitrailer or trailer; and~~

~~(c) That is not designated, designed or used for carrying cargo.~~

~~(2) "National Truck Network" means the network of highways:~~

~~(a) On which vehicles authorized by the provisions of 49 U.S.C. 31111 are allowed to operate pursuant to KRS 189.222 and 23 C.F.R. 658; and~~

~~(b) Included in an official order issued by:~~

~~1. The secretary;~~

~~2. Maintained on the Transportation Cabinet Web site at www.kytc.state.ky.us/planning/index.htm; and~~

~~3. Available in hard copy upon request at the Division of Vehicle Enforcement.~~

~~(3) "Width exclusion safety device" means an appurtenance:~~

~~(a) That is located at the side of a motor vehicle semitrailer or trailer;~~

~~(b) Whose function is normally related to the safe and efficient operation of the semitrailer or trailer; and~~

~~(c) That is not designated, designed or used for carrying cargo.~~

~~Section 2. Width Exclusion Safety Devices. (1) The following items shall be designated as a width exclusion safety device:~~

~~(a) Rearview mirrors;~~

~~(b) Turn signal lamps;~~

~~(c) Hand holds for cab entry or egress;~~

~~(d) Splash and spray suppressant devices; and~~

~~(e) Load induced tire bulge.~~

~~(2) The following items shall be designated as width exclusion safety devices if they do not extend beyond three (3) inches (0.0762 meter) on either side of the vehicle:~~

~~(a) Corner cap;~~

~~(b) Rear or side door hinges and their protective hardware;~~

~~(c) Rain gutters;~~

~~(d) Side marker lamps;~~

~~(e) Lift pads for a piggyback trailer;~~

~~(f) Hazardous materials placards;~~

~~(g) Tarp and tarp hardware;~~

~~(h) Tie-down assembly on a platform trailer;~~

~~(i) Wall variation from true flat; and~~

~~(j) Weevil pins or sockets on a low bed trailer.~~

~~Section 3. Except as provided in Section 4 of this administrative regulation, the maximum dimensions for a motor vehicle or combination motor vehicle, except a bus, using a public highway in Kentucky shall be as follows:~~

~~(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches (4.115 meters).~~

~~(2) Width: including body and load, not to exceed eight (8) feet (2.44 meters), excluding a width exclusion safety device.~~

~~(3) Length. Except as provided in subsection (4) of this section:~~

~~(a) The length of a single unit motor vehicle, including a part of the body or load, and excluding a length exclusion safety device, shall not exceed forty-five (45) feet (13.716 meters).~~

~~(b) A motor vehicle and trailer or semitrailer combination, including a part of the body or load, and excluding a length exclusion safety device, shall not exceed sixty-five (65) feet (19.812 meters).~~

~~(4) Length exceptions:~~

~~(a) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.915 meters) front and four (4) foot (1.22 meters) rear overhang shall not be included in the measurement of the sixty-five (65) feet (19.812 meters) limit established in subsection (3)(b) of this section;~~

~~(b) A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet (13.716 meters) shall be allowed to operate on the public highways of Kentucky.~~

~~(5) Weight.~~

~~(a) The gross weight limit is established in 603 KAR 005:066.~~

~~(b) The axle weight limit and the bridge weight formula are established in 603 KAR 005:066.~~

~~Section 4. (1) A motor vehicle or a combination motor vehicle, except a bus, with dimensions greater than those specified in Section 3 of this administrative regulation that does not exceed the dimensions established in subsection (2) of this section may be operated without an overweight or overdimensional permit on the following highways:~~

~~(a) The National Truck Network;~~

~~(b) The fifteen (15) mile (24.14 kilometers) access authorized in KRS 189.222(1)(f);~~

~~(c) The five (5) mile (8.05 kilometers) access authorized in Section 5(2) of this administrative regulation; and~~

~~(d) The one (1) mile (1.61 kilometers) access authorized in~~

~~Section 5(3) of this administrative regulation.~~

~~(2) A motor vehicle, combination motor vehicle, or towed unit, including any part of the body and load, and excluding a length or width exclusion safety device, shall not exceed, without an overdimensional permit, the following width and length dimensions if operating on the National Truck Network:~~

~~(a) Width - 102 inches (2.59 meters).~~

~~(b) Length of a towed unit.~~

~~1. Fifty-three (53) feet (16.154 meters) when operated in a single semitrailer combination.~~

~~2. Twenty-eight (28) feet (8.53 meters) if operated in a tractor-semitrailer-trailer combination or a tractor-semitrailer-semitrailer combination not to exceed two (2) towed units per combination.~~

~~3. There shall not be an overall length limitation on a motor vehicle or combination motor vehicle if the requirements established in this subsection are met.~~

~~4. In a tractor semitrailer-semitrailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length.~~

~~5. If there is not a second semitrailer mounted to the fifth wheel of the rear frame of a semitrailer, the length of the extension shall be included in the length measurement for the semitrailer.~~

~~(3) The gross vehicle weight limit for a motor vehicle with the dimensions established in subsection (2) of this section while operating on a highway segment established in Section 5 of this administrative regulation shall be 80,000 pounds (36,287.36 kilograms) except the axle weight limits and bridge weight limits established in 603 KAR 005:066 shall not be exceeded.~~

~~(4) The dimensions and weights specified in this section shall not be subject to an enforcement tolerance.~~

~~Section 5. (1) Operation of motor vehicles with increased dimensions that do not exceed the limitations established in Section 4(2) of this administrative regulation shall be allowed on all highways included in the National Truck Network.~~

~~(2) Except as provided by Section 8 of this administrative regulation, a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be allowed five (5) driving miles (8.05 kilometers) on a state-maintained highway from a highway segment established as part of the National Truck Network and fifteen (15) miles (24.14 kilometers) from an interstate or parkway exit to attain reasonable access to a terminal or facility for food, fuel, repairs, or rest.~~

~~(3) Except as provided by Section 7 of this administrative regulation, a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be allowed one (1) driving mile (1.61 kilometers) on a nonstate maintained, publicly-owned, public use highway from a highway segment established as part of the National Truck Network to attain reasonable access to a terminal or facility for food, fuel, repair, or rest.~~

~~Section 6. (1) Household Goods Transporters. A motor vehicle with an increased dimension as established in Section 4 of this administrative regulation that is used to transport household goods by a motor carrier certificated by either the Federal Motor Carrier Safety Administration or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.~~

~~(2) Single unit semitrailers. A motor vehicle with an increased dimension as established in Section 4 of this administrative regulation that consists of a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet excluding a length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.~~

~~Section 7. Nonstate Maintained Exceptions to One (1) Mile (1.61 Kilometers) Automatic Access. The city of Anchorage in Jefferson County has adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile (1.61 kilometers) access provision of Section 5(3) of this administrative regulation: The streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be:~~

~~(1) Evergreen Road;~~

~~(2) Bellewood Road;~~

~~(3) Lucas Lane; and~~

~~(4) Old Harris Creek Road.~~

~~Section 8. State-maintained Exceptions to Automatic Five (5) Mile (8.05 Kilometers) and fifteen (15) mile (24.14 kilometers) Access. The Department of Highways has found the following road segment for safety reasons to be exempt from the five (5) mile (8.05 kilometers) and fifteen (15) mile (24.14 kilometers) automatic access on a state-maintained highway as established in Section 5(2) of this administrative regulation. These road segments shall not be used by a vehicle with an increased dimension as established in Section 4 of this administrative regulation:~~

~~(1) Kentucky 146 - from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878;~~

~~(2) Kentucky 418 - from milepoint 2.892 at the intersection with the Blue Sky Parkway just southeast of the I-75 interchange in Fayette County to milepoint 6.089 at the Fayette/Clark County line;~~

~~(3) Kentucky 1973 - from milepoint 0.000 at the intersection with US 25 to milepoint 1.866 at its intersection with Kentucky 418, all in Fayette County; and~~

~~(4) US 119 in Letcher County from its junction with Kentucky 932 (MP 10.065) northeast of Oven Fork to Kentucky 15 (MP 17.308) in Whitesburg.~~

~~Section 9. Adoption Without Change. (1) 23 C.F.R. 658.5, Truck size and weight, route designation, length, width and weight limitations, August, 2001, is adopted without change.~~

~~(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Transportation Cabinet, Division of Vehicle Enforcement, 1st Floor, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-3276.~~]

GREG THOMAS, Secretary
ANDY BARBER, PE, State Highway Engineer
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: October 3, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(As Amended at ARRS, December 11, 2018)

704 KAR 008:010. Kentucky Academic Standards for Computer Science Elective.

RELATES TO: KRS 156.070, 156.160, ***156.850,*** 158.645, 158.6451, 160.290,***[156.850,]*** 704 KAR 003:305

STATUTORY AUTHORITY: 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645 and 158.6451. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the

Kentucky Board of Education. KRS 156.850 requires compliance with federal provisions and acts relating to vocational education. This administrative regulation incorporates by reference the Kentucky Academic Standards for Computer Science ***that*** contain the general courses of study and academic content standards of Computer Science for use in Kentucky's common schools.

Section 1. Public schools offering a computer science course or program shall meet the minimum content requirements established in the Kentucky Academic Standards for Computer Science Elective.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for Computer Science Elective", October 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, 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).

WAYNE D. LEWIS, Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

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LABOR CABINET
Kentucky Workers' Compensation Funding Commission
(As Amended at ARRS, December 11, 2018)

803 KAR 030:010. Special fund assessments.

RELATES TO: KRS 49.220[~~KRS 131.340~~], 342.0011, 342.122, 342.1221, 342.1222, ***342.1223,***[~~342.1223(2)(g),~~] 342.1231, ***[342.1223,]*** 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-***950[980]***

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission (KWCFC) to promulgate administrative regulations.***[This administrative regulation provides the procedures and forms to be used to report and remit special fund assessments.]*** KRS 342.1223(2)(g) requires the KWCFC to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. This administrative regulation ***establishes the procedures and forms to be used to report and remit special fund assessments,*** identifies audit expenses***, establishes[and provides]*** procedures for collection of ***assessments and[assessment.]*** expenses, and defines penalty and interest procedures.

Section 1. Definitions.

(1) "Actual physical receipt by the KWCFC" means:

(a) Physical delivery to[~~Actual physical delivery to the office of~~] the Funding Commission office prior to January 1, 2020; or

(b) Electronic filing of the Quarterly Premiums Report, accompanied by:

1. Electronic fund transfer of an assessment due to the KWCFC account; or

2. Prior to January 1, 2020, physical[~~Physical~~] delivery of payment to the office of the Funding Commission.

(2) "Assessment Payer" is defined by KRS 342.1231(10).

(3)[(~~2~~)] "Board" means, unless otherwise specified, the Board of Directors[~~board of directors~~] of the Kentucky Workers' Compensation Funding Commission.

(4)[(~~3~~)] "Engaged in severance or processing of coal" is defined by KRS 342.0011(23)(b).

(5)[(~~4~~)] "Insurance carrier" is defined by KRS 342.0011(22).

(6)[(~~5~~)] "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.

(7)[(~~6~~)] "Insurance policy", for an insurance company or group self-insurer, is defined by KRS 342.0011(26).

(8)[(~~7~~)] "KWCFC" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(9)[(~~8~~)] "Premium", for each employer carrying one's[~~his~~] own risk pursuant to KRS 342.340(1), is defined by KRS 342.0011(28).

(10)[(~~9~~)] "Premium", for every group of self-insurers, is defined by KRS 342.0011(24).

(11)[(~~10~~)] "Premium", for insurance companies, is defined by KRS 342.0011(25)(c).

(12)[(~~11~~)] "Premiums received":

(a) For group self-insurers, including group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies, means all assessments levied on its members by a group or contributed to it by the members, including premiums charged off or deferred;

(b) For insurance companies, is defined by KRS 342.0011(25)(a).

(13)[(~~12~~)] "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(14)[(~~13~~)] "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(15)[(~~14~~)] "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(16)[(~~15~~)] "SIC code" is defined by KRS 342.0011(29)***and is*** now known as ***the*** NAICS code.

(17)[(~~16~~)] "Special fund assessment" means the assessment established in KRS 342.122.

Section 2. Special Fund Assessment.

(1) Special fund assessment shall be imposed upon all premiums, including any premiums for coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C.***[Sec.,]*** 901-945, for an insurance policy providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

(a) Excess, reinsurance, or coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C.***[Sec.]*** 901-945, for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshore and Harbor Workers' Compensation Act, 33 U.S.C.***[Sec.]*** 901-***950[980]*** coverage defined as USL&H Manual Premium +/- the premium applicable of all rates/factors/and fixed expenses; and

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For an insurance policy with provisions for deductibles effective on or after January 1, 1995, the premium upon which a special fund assessment is imposed for insurance companies shall not include schedule rating modifications, debits, or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4)(a) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned.

(b) Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(5)(a) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or

return premiums at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned.

(b) A premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance, or Black Lung coverage.

(6) Special fund assessment shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies, in accordance with KRS 342.122(4).

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6), and (7) of this section.

(d) The election made in accordance with paragraph (a), (b), or (c) of this subsection may not be rescinded for at least ten (10) years,[~~,~~] in accordance with the provisions of KRS 342.122(4).

(e) Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

(f) 1. Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned.

2. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(9) (a) Employers self-insuring Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department of[~~executive director of the Office of~~] Workers' Claims in accordance with KRS 342.0011(28).

(b) One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments shall be paid to the KWCFC each calendar quarter.

(10) The premium calculated by the Commissioner of the Department[~~executive director of the Office~~] of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11)(a) Special fund assessments shall be paid quarterly, in accordance with KRS 342.122(2).

(b) Prior to January 1, 2020, if the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable, if not postmarked in accordance with KRS 342.122(2), shall be sent to the KWCFC in advance so as to be received by the KWCFC no later than close of business, on the first business day immediately following the weekend due date. After January 1, 2020, ***the*** assessment ***shall be[~~is~~]*** due and payable ***electronically*** in accordance with KRS 342.122 (2)(b).

(12)(a) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that established by KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that established by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured in accordance with KRS 342.1231***(9) and (10)[~~(7) and (8)~~]***.

(b) If, after good faith efforts, the excess cannot be returned to the insured in accordance with KRS 342.1231***(9) and (10)[~~(7) and (8)~~]***, the excess shall be remitted to the KWCFC.

(c) An insurance carrier shall not retain special fund assessments in excess of those established by KRS 342.122 and this administrative regulation.

(13) The assessment payer ***shall[~~will~~]*** be notified if proof of refund to insured has not been timely provided or escheated to the KWCFC per KRS 342.1231.

(14) When documentation is received by the KWCFC providing refund to insured information:

(a) Penalty and interest ***shall[~~will~~]*** be calculated; and

(b) The assessment payer ***shall[~~will~~]*** be notified of the additional amount due.

Section 3. Penalty and Interest.

(1) The KWCFC Board or its designee may waive part or all of the penalty, but not the interest, in accordance with KRS 342.1221.

(a) The designee may waive part or all of the penalty, if under $5,000, in the absence of the KWCFC Board of Directors.

(b) If an assessment payer is not satisfied with the decision made by the designee, an appeal may be submitted within thirty (30) days from the date of mailing of the decision to the Board of Directors of the KWCFC for final ruling.

(c) If an assessment payer is not satisfied with the decision made by the KWCFC Board of Directors, an appeal may be submitted to the Kentucky Claims Commission within thirty (30) days from the date of mailing of the final ruling.

(2) The assessment payer ***shall[~~will~~]*** receive notification of past due additional assessment, penalty and interest, and expenses. When payment is received by the KWCFC:

(a) Penalty and interest ***shall[~~will~~]*** be calculated; and

(b) Notification ***shall[~~will~~]*** be sent to the assessment payer of the additional amount due.

Section 4. Refunds.

(1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, if:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2)(a) Assessment payers[~~Taxpayers~~] may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report.

(b) The assessment payer[~~taxpayer~~] shall submit with the claim all documents required to support the claim.

(3) All refunds, including those made in accordance with subsection (2) of this section, shall be subject to audit by the Funding Commission.

Section 5. Audits; General.

(1) In accordance with KRS 342.1223(2)(g), the Kentucky Workers' Compensation Funding Commission shall conduct audits independently or in cooperation with the***[~~Department of~~]*** Labor ***Cabinet*** or the ***Department of Revenue[~~Finance and Administration Cabinet~~]*** of all entities subject to the special fund assessments established by KRS 342.122.

(2)[~~(a)~~] Until the initial audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the assessment payer per KRS 342.1231(8).[~~taxpayer.~~

~~(b) After completion of the initial audit, supporting~~

~~documentation and records shall be maintained for five (5) years from the date of the last Funding Commission audit or (5) years from the date that the premium and assessment was reported or refund or credit was taken, whichever is later.~~]

(3) All necessary and reasonable expenses incurred by the KWCFC in conducting an audit shall be reimbursed to the KWCFC by the assessment payer audited.

(4) Expenses to be reimbursed shall include:

(a) Travel Expenses:

1. Meals;

2. Lodging;

3. Transportation;

4. Parking; and

5. Incidentals; and

(b) Labor expenses:

1. Preparation for the audit;

2. Travel;

3. Finalizing of the audit; and

4. Preparation of written reports and correspondence.

(5) KWCFC employees shall be reimbursed for all out-of-pocket expenses they incurred while conducting audits.

(6) Except for air transportation, meals**,** and mileage, expenses shall be reimbursed at actual cost to employees.

(7) Air fare shall be reimbursed at a rate not to exceed the cost of coach class.

(8) Meals shall be reimbursed at actual cost not to exceed fifty-five (55) dollars per day.

(9) Mileage for the use of privately owned auto shall be reimbursed at the rate established in 200 KAR 2:006, Section 7(4)(a).

Section 6. Audits; Insurance Companies.

(1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period,[~~including:~~] on Form KWCFC-05, ***[(]***Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies***[)]***.[~~(a) Writing company's indicator~~;

~~(b) Policy number;~~

~~(c) Insured's name;~~

~~(d) Transaction code;~~

~~(e) Accounting date (YY/MM/DD);~~

~~(f) Policy effective date (YY/MM/DD);~~

~~(g) Invoice date (YY/MM/DD);~~

~~(h) Premium;~~

~~(i) Special fund assessment; and~~

~~(j) Total (premium and special fund assessment).~~]

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department[~~Office~~] of Insurance***, incorporated by reference in 806 KAR 52:010***;

(c) A complete listing of:

1. Current filings with the Kentucky Department of Insurance;

2.[~~(c) A listing of~~] Kentucky policies containing written premium written off as a bad debt;

3.[~~(d) A listing of policies~~] Policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;

4.[~~(e) A complete list of sample~~] Sample policies requested by ***the*** Funding Commission;

5.[~~(f)A complete list of deductible~~] Deductible policies written nationwide. This list shall contain at a minimum the policy number, insured's name, and policy effective date;

6.[~~(g) A complete listing of deductible~~] Deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs; and

7.[~~(h) A complete listing of deductible~~] Deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation; and

(d)[~~(i)~~] All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished with:

(a) A schedule identifying the assessment rates applied to these policies;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system; and

(d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections ***information[~~Report as originally filed with KWCFC~~]***.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy;

(b) Use of audit sampling techniques;

(c) Verification and reconciliation to NAIC reports; and

(d) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 7. Audits; Group Self-insurers.

(1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period on Form KWCFC-06**,** Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer.[~~(a) Group self-insurer's indicator;~~

~~(b) Policy or member number;~~

~~(c) Insured's name;~~

~~(d) Transaction code;~~

~~(e) Accounting date (YY/MM/DD);~~

~~(f) Member's effective date (YY/MM/DD);~~

~~(g) Effective date of self-insurance year;~~

~~(h) Invoice date (YY/MM/DD);~~

~~(i) Premium;~~

~~(j) Special fund assessment; and~~

~~(k)Total (premium and assessment).~~]

(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for each audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of Workers' Claims;[~~Office of Workers' Claims;~~]

(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of Workers' Claims;[~~Office of Workers' Claims;~~]

(d) A complete list of sample policies or agreements requested by the Funding Commission; and

(e) All other documents necessary to support reported premiums and assessments.

(3) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these self-insurance years;

(b) The dates upon which these rates were first entered into

the policy or premium management system; and

(c) The dates upon which these rates became active in the policy or premium management system.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy or members' account;

(b) Detailed examination of members' agreements;

(c) Use of audit sampling techniques;

(d) Verification and reconciliation to Department of Workers' Claims' reports; and[~~Office of Workers' Claims' reports;~~]

(e) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Department of Workers' Claims[~~Office of Workers' Claims~~] upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 8. Audits; Individual Self-insurers.

(1) Upon request, self-insurers shall provide the Funding Commission with the following:

(a) Loss experience reports;

(b) Payroll records;

[~~(c) Kentucky UI-3;~~

~~(d) Federal Form 941 "Employer's Quarterly Federal Tax Return";~~

~~(e) Federal Form 940 "Employer's Annual Federal Unemployment Tax Return"; and~~]

(c) All back up documentation request for each audit period; and

(d) Other information necessary because of the unique nature of the entity being audited.[~~(f) Other information necessary because of the unique nature of the entity being audited.~~]

(2) The Funding Commission shall utilize one (1) or more of the following procedures in completion of audits:

(a) Detailed examination of all required records;

(b) Use of audit sampling techniques; and

(c) Other procedures necessary because of the unique nature of the entity being audited.

(3) Upon completion of an audit the Funding Commission shall not re-audit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the information previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 9. Audits; Invoice, Protest and Resolution.

(1) The Funding Commission shall send to the assessment payer[~~taxpayer~~] a notice of any assessment assessed by the Funding Commission.

(2) A summarized invoice consisting of totals for "labor", "travel" and "all other" expenses shall be submitted to the assessment payer as soon as practicable after completion of the audit. An itemized invoice shall be available upon request.

(3)(a) The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice.

(b) The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

(c) 1. Upon written request, the Funding Commission shall extend the time for filing the supporting statement if it is determined that the delay is necessary and unavoidable.

2. The refusal of an extension may be reviewed in the same manner as a protested assessment.

(4)[~~(2)~~] After a timely protest has been filed, the assessment payer[~~taxpayer~~] may request a conference with the Funding Commission staff.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer[~~taxpayer~~] may appear in person or by representative.

(c) Further conferences may be held by mutual agreement.

(5)[~~(3)~~] For those issues not resolved during the conferences described in subsection ***(4)[(2)]*** of this section, the assessment payer[~~taxpayer~~] may request a conference with the Funding Commission's Board of Directors.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer[~~taxpayer~~] may appear in person or by representative.

(6)[~~(4)~~] After considering the assessment payer's[~~taxpayer's~~] protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the assessment payer.[~~taxpayer.~~] The ruling shall state:

(a) That it is the final ruling of the Funding Commission and shall generally state the issues in controversy;

(b) The Funding Commission's position; and

(c) The procedure for appeal to the Kentucky Claims Commission[~~Kentucky Board of Tax Appeals,~~] in accordance with [~~KRS 131.340~~] KRS 49.220 and 802 KAR 1:010.

(7)[~~(5)~~](a) The assessment payer[~~taxpayer~~] may request in writing a final ruling any time after filing a timely protest and supporting statement.

(b) If a final ruling is requested, the Funding Commission shall issue the ruling within sixty (60) days or at the next Board of Directors meeting whichever is later, from the date the request is received by the Funding Commission.[~~thirty (30) days from the date the request is received by the Funding Commission.~~]

(8)[~~(6)~~] After a final ruling has been issued, the assessment payer[~~taxpayer~~] may appeal to the Kentucky Claims Commission[~~Board of Tax Appeals~~] pursuant to the provisions of KRS 49.220.[~~KRS 131.340.~~]

Section 10. Reports.

(1) Insurance companies, group self-insurers, and individual self-insurers shall file a Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter.

(a) The quarterly premiums report and assessment due and payable shall be received by[~~in the office of~~] the KWCFC no later than thirty (30) days following the end of the calendar quarter.

(b) Receipt of the Quarterly Premiums Report and assessment due and payable shall be considered timely through electronic filing and payment; and prior to January 1, 2020 actual physical receipt by the KWCFC or by postmark of the U.S. Postal Service.

(2) Insurance companies shall file Form KWCFC-01***, [(]***Quarterly Premiums Report***[)]***.

(3) Employers carrying their own risk shall file Form KWCFC-02***, [(]***Quarterly Premiums Report***[)]***.

(4) Group self-insurers shall file Form KWCFC-03***, [(]***Quarterly Premiums Report***[)]***.

(5) ***Employers engaged in severance or processing of coal shall file KWCFC-08, Severed Coal Quarterly Assessment Report.***

(6)(a) Every insurance company, group self-insurer, and individual self-insurer providing workers' compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.

(b) These reports shall be submitted to the KWCFC electronically[~~on electronic diskettes~~] and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-05***, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies; Form KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer; or Form KWCFC-07, Annual Audit and Collections Report, Individual Self Insurer, as applicable.[(Annual Audit and Collections Report, Data***

~~***Reporting Instructions Insurance Companies), Form KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer), or Form KWCFC-07 (Annual Audit and Collections Report, Data Reporting Instructions Individual Self Insurer), as applicable.]***~~[~~(6)(a) Every group self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.~~

~~(b) These reports shall be submitted to the KWCFC and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instruction incorporated by reference in Form KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer).~~

~~(7)(a) Every individual self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.~~

~~(b) These reports shall be submitted to the KWCFC and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-07 (Annual Audit and Collections Report, Data Reporting Instructions Individual Self Insurer).~~]

(7)[~~***(6)***~~]~~(8)~~] An insurance company or group self-insurer that does not write, receive, or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Non-writer Statement)[~~(Nonwriter Statement)~~] to the Kentucky Workers' Compensation Funding Commission, electronically or by mail, 42 Mill Creek Park,[~~42 Millcreek Park, P.O. Box 1220,~~] Frankfort, Kentucky 40601[~~40602~~] no later than April 30th following the end of the calendar year.**[Section 12. Jeopardy Assessment.**

(1) The Funding Commission may issue a Jeopardy Assessment Audit in the following instances:

(a) In the event an assessment payer has hindered or evaded the audit process;

(b) Has done any other act rendering the proceedings to assess or collect assessment partly or wholly ineffective;

(c) Delayed providing information; or

(d) Provided incorrect information.

(2) A jeopardy assessment will be considered a completed audit by the KWCFC and the assessment payer will receive invoice in accordance with KRS 342.1221.]

Section **11**.[**12**][~~11~~] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KWCFC-01, Quarterly Premiums Report", 08/2018;

(b) "KWCFC-02, Quarterly Premiums Report", 08/2018;

(c) "KWCFC-03, Quarterly Premiums Report", 08/2018;

(d) "KWCFC-04, Nonwriter Statement", 08/2018;

(e) "KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies", 08/2018;

(f) "KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer", 08/2018;

(g) "KWCFC-07, Annual Audit and Collections Report, Individual Self-Insurer", 08/2018; and

(h) "KWCFC-08, Severed Coal Quarterly Assessment Report", 08/2018.[~~***(a) "KWCFC-01 (Quarterly Premiums Report), (08/2018)***~~][~~(03/2010)~~][~~***";***~~]

~~***(b) "KWCFC-02 (Quarterly Premiums Report), (08/2018)***~~[~~(03/2010)~~][~~***";***~~]

~~***(c) "KWCFC-03 (Quarterly Premiums Report), (08/2018)***~~[~~(03/2010)~~][~~***";***~~]

~~***(d) "KWCFC-04 (Nonwriter Statement), (08/2018)***~~[~~(03/2010)~~][~~***";***~~]

~~***(e) "KWCFC-05 (Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies), (08/2018)***~~[~~(03/2010)~~][~~***";***~~]

~~***(f) "KWCFC-06 (Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer), (08/2018)***~~[~~(03/2010)~~][~~***"; and***~~]

~~***(g) "KWCFC-07 (Annual Audit and Collections Report, Individual Self-Insurer), (08/2018)***~~[~~(03/2010)~~][~~***";***~~]

~~***(h) "KWCFC-08 (Quarterly Premiums Report), (08/2018).***~~]

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This is to certify that the executive director has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.1224(5).

REUBEN JONES, Executive Director
JUDY LONG, Chair, Board of Directors
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 15, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(As Amended at ARRS, December 11, 2018)

805 KAR 3:100. Equipment use and operation.

RELATES TO: KRS 351.070

STATUTORY AUTHORITY: KRS 351.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070 authorizes the Secretary of the Energy and Environment Cabinet to promulgate, amend, or rescind any administrative regulations as necessary and suitable for the proper administration of KRS Chapter 351. This administrative regulation establishes safety standards controlling the use and operation of equipment in the Commonwealth's surface type coal and clay mines, which include strip and auger mining operations.

Section 1. (1) The following items shall be guarded to prevent injury:

(a) Gears;

(b) Sprockets;

(c) Chains;

(d) Drive, head, tail, and take-up pulleys;

(e) Flywheels;

(f) Couplings;

(g) Shafts;

(h) Sawblades;

(i) Fan inlets; and

(j) Similar exposed moving machine parts that may cause injury to persons.

(2) An overhead belt shall be guarded if the whipping action from a broken belt may be hazardous to a person below.

(3) A guard at conveyor drive, head**,** and tail pulleys shall be sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley.

(4) A protruding set screw on revolving parts shall be guarded.

(5) Except while testing the machinery, a guard shall be securely in place while machinery is being operated.

(6) A guard shall be sufficiently strong and maintained to provide the required protection.

(7) A stationary grinding machine other than ***a*** special bit grinder shall be equipped with:

(a) Peripheral hoods (less than ninety (90) degree throat

openings) capable of withstanding the force of a bursting wheel;

(b) Adjustable tool rests set as close as practical to the wheel; and

(c) Safety washers.

(8) A face shield or goggles, in good condition, shall be worn while operating a grinding wheel.

(9) A hand-held power tool, other than ***a*** rock drill, shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety devices.

(10) A guard or shield shall be provided in areas where flying or falling materials present a hazard.

(11) (a) A vehicle, such as a fork lift, truck, front-end loader, and bulldozer, shall be provided with rollover protection, if necessary, to protect the operator.

(b)1. Beginning January 1, 2016:

a. An excavator newly placed in service at a licensed facility shall be equipped with rollover protection that shall meet, at a minimum, the International Organization for Standardization (ISO) 12117-2:2008 standard or the equivalent ISO standard; and

b. A person operating an excavator that is not equipped with certified rollover protection shall be trained by the Division of Mine Safety as having successfully completed an excavator operation safety course.

2. Beginning January 1, 2020[~~2019~~], any excavator in operation at a licensed facility shall be equipped with rollover protection meeting the current International Organization for Standardization (ISO) standards in place.

(12) (a) A vehicle, such as a fork lift, truck, front-end loader, and bulldozer, shall be provided with falling object protection, if necessary, to protect the operator against falling material.

(b)1. An excavator manufactured after January 1, 2011, shall be provided with falling object protection. The falling object protection shall meet ISO standards in place when the machine was manufactured.

2. Effective January 1, 2016, an excavator that operates in an application with the risk of falling objects shall be equipped with falling object protection that shall meet, at a minimum, the ISO 10262:1998 Level II standard or the equivalent ISO standard.

(13) Unsafe equipment or machinery shall be removed from service immediately.

(14) Machinery and equipment shall be operated only by an authorized and experienced person.

(15) A repair or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except if machinery motion is necessary to make an adjustment or if nonenergized components of large machinery can be safely repaired while the machine is operating.

(16) A person shall not work on mobile equipment in a raised position until it has been blocked in place securely. This shall not preclude the use of equipment specifically designed ***for these purposes***, such as elevated mobile work platforms.

(17) A drive belt shall not be shifted while in motion unless the machine is provided with ***a*** mechanical***[a]*** shifter.

(18) A belt, chain, or rope shall not be guided onto a power driven moving pulley, sprocket, or drum with the hands, except on slow moving equipment especially designed for hand feeding.

(19) A pulley or conveyor shall not be cleaned manually while the conveyor is in motion.

(20) A belt dressing shall not be applied manually while the belt is in motion unless an aerosol-type dressing is used.

(21) Machinery shall not be lubricated while in motion if a hazard exists unless equipped with extended fittings or cups.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 15, 2018

FILED WITH LRC: October 15, 2018 at 10 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(As Amended at ARRS, December 11, 2018)

902 KAR 008:170. Local health department financial management requirements.

RELATES TO: KRS 41.240(4),[~~211.170,~~] 211.180(1), 212.025, 212.120[~~212.230, 212.240~~], 212.245(3), (4), 212.890, 424.110-424.150, 2 C.F.R. Part 200

STATUTORY AUTHORITY: KRS 194A.050(1), 211.170(1), ***(2),*** (3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to[~~protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth; to~~] operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law. KRS 211.170(1), ***(2),***[~~and~~] (3), and (6) require the cabinet[~~require the Department for Public Health~~] to establish policies and standards of operation; supervise financial, personnel, program, administrative and other functions; and allocate, modify, or cancel allotments of state funds for Kentucky's local health departments. This administrative regulation establishes minimum fiscal and financial management requirements for Kentucky's county and district local health departments and for all other classes of local health departments, except if a specific Kentucky revised statute requires a more stringent minimum requirement.

Section 1. Definitions.

(1) "Fee-for-service program" means a program in which service fees, excluding program administration fees, are greater than fifty (50) percent of funding.

(2) "Local support" means local health department financial support:

(a) Including:

1. Unrestricted receipts from a local government agency or special district;

2. Receipts from the public health taxing district;

3. Nonfederal receipts from a contract with a board of education; and

4. An unrestricted donation from another source; and

(b) Excluding funds from the Unrestricted[~~Undesignated~~] and Restricted fund balances.

(3)[~~"OMB" means the federal Office of Management and Budget.~~

~~(4)~~] "Public health department director" means:

(a) The administrative or health officer of a county or district health department;

(b) The administrative assistant of a county health department that does not have a health officer;

(c) The director of a district health department that does not have a health officer;

(d) The district director of health of an independent district department of health; or

(e) The commissioner of an urban-county department of health or of a health department serving a county with a city of the first class.

(4)[~~(5)~~] "Restricted fund[~~balance~~]" means the portion of a local health department's total fund balance that is limited[~~restricted~~] by the Department for Public Health[~~for use~~] for a specific program's expenses or other items of expense.

(5)[~~(6)~~] "Unrestricted[~~Undesignated~~] fund balance" means the portion of a local health department's total fund balance that is not limited[~~restricted~~] by the Department for Public Health for a specific program's expenses or other items of expense.

Section 2. Budgeting Requirements.

(1) Each local health department shall prepare a fiscal year budget in accordance with annual budgeting guidance provided[~~instructions developed and distributed~~] by the Department

for Public Health.

(2) Each local health department shall have a balanced budget in which receipts at least equal expenditures***[,]*** and[~~. Each local health department~~] shall operate within its approved budgets.

(3) Each local health department annual budget shall be approved by both the governing local board of health and the Department for Public Health.

(4)(a) Each local health department shall be responsible for making budget changes necessitated by:

1. Changes in financial status;

2. Changes in project status; or

3. The addition or deletion of a new project.

(b) Changes shall:

1. Be subject to review and approval by the Department for Public Health; and

2. Require a corresponding change in plans if required by the Department for Public Health.

(5) Actual capital expenditures of local health departments for furniture and equipment, data processing equipment, and vehicles shall not exceed the approved budgeted amount without prior approval by the governing board of health.

(6) Actual use of a local health department's unrestricted[~~undesignated~~] fund balance in excess of the amount included in the approved budget shall be approved by the governing board of health and shall be used solely for the operation and maintenance of local health departments.

(7) An actual deficit in a local health department's financial operations for the fiscal year wherein cash expenditures and payroll related liabilities exceed available cash receipts, including approved use of the unrestricted fund balance, shall not be allowable.

(8)(a)[~~If~~] The Department for Public Health shall notify the local health department in writing if it determines that:

1. A local health department is receiving fewer receipts than are budgeted;[~~or~~]

2. A local health department is making expenditures in excess of the approved budget; or,

3.[~~if through any other circumstances~~]A deficit condition is probable at the end of the fiscal year[~~, the Department for Public Health shall notify the local health department in writing of the determination~~].

(b) Within fifteen (15) working days of receipt of the notification, the local health department shall inform the Department for Public Health in writing of the reasons that the determination may be in error.

(c) If the reasons and corrective actions listed by the local health department are not sufficient [~~in the department's opinion~~] to prevent a deficit condition from occurring at the end of the fiscal year, the Department for Public Health shall direct the local health department to:

1. Institute a hiring freeze on employees;[~~,~~]

2. Institute a freeze on meritorious, promotional, or other salary increments;[~~,~~]

3. Institute a reduction in contractual and other expenditure categories;[~~,~~] or***[;]***

4. Take other action necessary to correct the deficit situation.

Section 3. Use of Receipts.

(1) A local health department may, with the approval of the Department for Public Health, transfer funds from a restricted to an unrestricted account.

(2)[~~(1)~~] Receipts from any source shall be used in accordance with laws, policies, administrative regulations, and contracts governing the use of the receipts. Receipts shall be used only for the operation and maintenance of the health department for necessary, reasonable, and proper purposes that protect and improve the health of the people of the Commonwealth.

(3)[~~(2)~~] The minimum acceptable level of local support shall be determined annually by the Commissioner of the Department for Public Health.

(4)[~~(3)~~] The state allotment to a local health department shall be adjusted in the following circumstances:

(a) The local health department decreases its budgeted amount of local support below the minimum acceptable level. The state allotment shall be decreased by the same percentage in the year of the decrease.

(b) The local health department receives less local financial support than the required level. The state allotment shall be decreased by[~~a percentage equal to~~] the percentage that the actual local support was deficient[~~less than the required local support~~]. The decrease shall apply to the fiscal year following the shortage.

(c) The local health department accumulates an unrestricted fund balance, as of June 30 of a fiscal year, in excess of thirty (30) percent of that year's expenditures for non fee programs plus forty (40) percent of that year's expenditures for fee-for-service programs, or $100,000, whichever is greater. The local health department shall submit, to the Department for[~~of~~] Public Health, a written plan of use for the amount of the excess. If approved, the funds shall be placed into a local restricted fund to be used solely ***as[for the purpose(s)]*** approved.

(5)[(4)] Fees.

(a)1. A request from a local health department to change patient fees to either a sliding or nominal fee basis shall be sent to the Department for Public Health for approval.

2. A request shall include documentation of the proposed full amount of the fee, the estimated annual cost of the service, and the estimated net fee income for the service.

3. Charges for medical supplies and equipment may be requested as a percentage of the acquisition cost of the supply or equipment item or may be requested as charges for individual items.

(b) Patient fees charged to self-pay patients shall be on a sliding fee basis approved by the Department for Public Health and be based on the level of income matched with the level of poverty, utilizing the federal poverty guidelines as published annually by the Federal Department of Health and Human Services, according to the following scale:

1. Above 250 percent of poverty, fee shall be assessed at full charge of service;

2. From 101 to 250 percent of poverty, fee shall be based on a schedule of discounts; and

3. Below 101 percent of poverty, there shall be no fee[~~, if approved by the Department for Public Health, may be charged on a sliding fee basis, in accordance with the following formula: Fees for self-pay patients with a household income up to 250 percent of the most recent poverty guidelines, published annually by the Department of Health and Human Services, shall be based on a schedule of discounts from 101 to 250 percent of poverty, with full charge assessed for individuals above 250 percent of poverty and no charge for individuals below 101 percent of poverty;~~] except as specified in paragraph (c) of this subsection.

(c)[~~:~~

~~1.~~] A nominal fee up to five (5) dollars shall be charged for communicable disease services specified by the Department for Public Health.

(d) The inability to pay the assessed fee shall not be a barrier to services.

(e)[~~; and 2.~~] A charge shall not be made to school age children at a school-based clinic if requested by the local health department and authorized by the Department for Public Health.

(f)[~~a. Inability to pay the assessed fee shall not be a barrier to services.~~

~~b.~~] A policy of a local health department that may result in referral of services due to nonpayment of fees shall be approved by the Department for Public Health.

(g)1.[~~c.~~] A local health department shall bill third-party payors for covered services provided to individuals.

2.[~~(c)~~] If a third-party governmental payor is billed for services rendered to an eligible patient, the regulations of the third-party payor shall be followed for the part of the fee charged directly to the patient.

3.[~~(d) A Medicaid "spend down" patient shall be billed at 100 percent of charges.~~

~~(e)~~] A patient's[~~patient who has~~] health insurance carrier[~~coverage~~] shall be billed at 100 percent of charges. A balance not covered by the health insurance carrier shall be

charged to the patient, except that the amount charged shall not exceed the amount that a patient without health insurance coverage would be charged, using standard discounts as applied to total charges for services rendered.

(h)[~~(f)~~] A fee, regardless of the source of the fee or the funding of the project, shall be applied to the project that generates the fee, in accordance with income procedures of 2 C.F.R. 200.307(e)[~~the OMB Circular A-102~~]. A third-party cost reimbursement payment and an interim payment shall be recorded in the same project where the costs were recorded, in proportion to the expenditures of each project that were reimbursed by the third party.

(6)[~~(5)~~] A matching requirement for any source of receipts shall be the sole responsibility of each local health department.

(6) The following policies shall be applied in closing receipt accounts for the local health department fiscal year, July 1 to June 30:

(a) Receipts earned and received during a fiscal year shall be recorded as a receipt of that fiscal year; and

(b) Receipts earned in one (1) fiscal year and received after June 30 of that fiscal year shall be recorded as new fiscal year receipts.

Section 4. Expenditure Policies. Policies and procedures required by 2 C.F.R. 200 Subpart E[~~the OMB Circular A-87~~] shall be followed by local health departments for expenditures in projects, regardless of the source of funds for the project. The following policies concerning allowable expenditures and their proper documentation shall be followed by local health departments:

(1) Salaries, wages, benefits, and personnel payments.

(a) Salaries and wages for only those positions specified in administrative regulations for local health departments,[~~902 KAR 008:040 and~~] 902 KAR 008:060 through 902 KAR 008:090, and 902 KAR 008:140, shall be allowable. The positions and related expenditures shall be included in the approved budget or approved budget revisions of the local health department. Other salary, wage, or bonus payments shall not be allowable, unless specifically approved by the Department for Public Health. Uniform pay dates shall be determined annually by the Department for Public Health.

(b) Expenditures shall be authorized for payment of employer paid fringe benefits required or allowed by policies of the Department for Public Health.

1. Required benefits shall be payments of the single-coverage amount for health insurance and life insurance that are part of the state-negotiated plans.

2. Additional allowed benefits shall be determined by the public health department director and approved by the governing board of health.

3. A part-time employee or a personal services contract employee working less than 100 hours per month shall not be eligible for employer-paid fringe benefits.

4. A payment to or on behalf of an employee for another direct or fringe benefit or other reason shall not be made unless:

a. Specifically allowed by this administrative regulation;

b. Approved by the Department for Public Health; and

c. A disbursement for services of a contract employee or independent contractor shall be made in accordance with the terms of the written contract. A contract payment shall not be made without proper written documentation demonstrating that services have been rendered.

(2) Capital expenditures.

(a) Capital expenditures are allowable for necessary capital equipment, land, and buildings.

1. The equipment in this category shall cost more than $5,000 and have an expected useful life of one (1) year or more.

2. The same purchasing policies apply to capital items as apply to noncapital purchases.

3. Before purchasing land or buildings or contracting for the construction or remodeling of a building, the local health department shall contact the Department for Public Health for approval.

(b) A local health department shall pay a vendor within thirty (30) working days of the receipt of the service or goods, or within thirty (30) working days of the receipt of the invoice or bill from the vendor, whichever is later, unless the local health department and the vendor have agreed in writing to a longer period of time.

(c) A local health department shall not donate anything of value to any individual or entity.

Section 5. Travel Policies.

(1) The public health department director shall insure that travel expenses are economical.

(2)[~~(1)~~] A person who travels on official local health department business shall state on the expense voucher the purpose of each trip and shall maintain records to support claims.

(a) A local health department may provide an employee with a credit card to cover travel expenses.

(b) Due care shall be taken to assure that use of a local health department credit card is not abused.

(c) A local health department shall not provide an employee with cash to pay travel expenses. The public health department director responsible for insuring that travel reimbursement conforms to this policy shall disallow, reduce, or strike from an expense voucher any claim contrary to this administrative regulation, and may require written justification for an amount claimed.

(3)[~~(2)~~] With the exceptions cited in this policy, reimbursement shall not be claimed for expenses of a person other than an employee, or other person in the official service of the local health department. Only necessary expenses of official travel shall be reimbursed.

(4)[~~(3)~~] Each day's vicinity travel shall be listed on a separate line on the expense voucher. The employee's supervisor or the public health department director shall monitor vicinity mileage claimed by an employee on travel status.

(5)[~~(4)~~] A travel voucher shall be signed and dated by the employee submitting the claim and by an employee designated in accordance with the local health department's internal control procedures. The public health department director's travel voucher shall be signed by one (1) or more board of health members designated at a board of health meeting to perform the function.

(6)[~~(5)~~] The official work station of an employee shall be:

(a) The street address of the local health department facility;

(b) For a local health department with more than one (1) facility, the facility in which the employee most often works;

(c) Established not for an employee's purposes, but in the best interest of the local health department; and

(d) Designated for a valid purpose.

(7)[~~(6)~~] A standard travel expense voucher or another voucher approved by the Department for Public Health shall be used to claim reimbursement for travel expenses.

(a) Each travel expense voucher shall show the claimant's identifying number, name, address, and official workstation. The travel voucher may be typed, prepared by computer, or legibly prepared in ink.

(b) Receipts shall be stapled to the travel voucher.

(c) If leave interrupts official travel, the travel voucher shall show the dates of leave.

(8)[~~(7)~~] A travel expense shall not be reimbursed unless the travel was authorized in advance by the public health department director or designee[~~as follows:~~

~~(a) Travel in Kentucky and within the other forty-nine (49) states and the District of Columbia may be approved by the public health department director or designee; and~~

~~(b) Budgeted out-of-state travel funds shall be available in the amounts required for the out-of-state travel~~].

(9)[~~(8)~~] A local health department employee traveling on local health department business shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the employee.

(10) Local[~~(9)~~] health department-owned vehicles and gasoline credit cards shall be used for local health department business travel if available and feasible.

(a) Mileage payment shall not be claimed by an individual

when local health department vehicles are used.

(b) Routine personal use of a local health department vehicle, including commuting use, shall not be an allowable public expenditure.

(c) An assignment of a vehicle to an employee who takes the vehicle home shall be minimal and limited to direct service personnel providing:

1. On-call direct services, or a majority of services in the field; or

2. Substantial direct services on the way to or from the employee's workstation.

(d) If a vehicle is assigned under paragraph (c) of this subsection, some personal commuting mileage may be unavoidable. A local health department shall develop a written policy to address the unavoidable personal mileage. The policy shall conform to current federal and state tax requirements for income and travel and shall be forwarded to the Department for Public Health for review and approval.

(11)[~~(10)~~] Mileage claims for use of privately-owned vehicles shall be disallowed if a local health department vehicle was available and feasible.

(12)[~~(11)~~] An employee on official travel status whose private or agency automobile breaks down may continue in travel status as approved by the public health department director.

(13)[~~(12) An employee on official travel status may be granted annual leave during which time and travel expenses shall not be reimbursed.~~

~~(a)~~] An employee on official travel status may be continued on travel status, as approved by the public health department director, if the employee becomes incapacitated due to illness or injury that qualifies as official sick leave. [~~(b)~~] Medical expenses shall not be reimbursable[~~allowable~~] travel costs.

(14)[~~(13)~~] On nonworking days, an employee on official travel status shall forfeit official travel status once[~~if~~] the employee returns to his official work station or domicile.

(15)[~~(14)~~] Reimbursement shall not be paid for travel between the employee's residence and official workstation, unless requested to report to work while off duty.

(16)[~~(15)~~] Commercial airline travel shall be coach or tourist class. Additional expense for first-class travel shall not be reimbursed.

(17)[~~(16)~~] Mileage for each in-state trip shall be based on the Department of Transportation's official mileage map or on the Finance and Administration Cabinet's mileage chart if available. Out-of-state mileage shall be based on mileage maps. If point of origin is the claimant's residence, mileage[~~,~~] and time shall be paid between the residence and travel destination, or between the work station and travel destination, whichever is shorter.

(18)[~~(17)~~] The cost of renting a car or other special conveyance in lieu of ordinary transportation shall be allowed only with acceptable written justification to the public health department director. Privately-owned aircraft may be used only when it is to the advantage of the local health department as evidenced by a reduction in both travel costs and travel time.

(19)[~~(18)~~] Lodging costs shall be the most economical available.

(a) Facilities providing special government rates or commercial rates shall be used where feasible.

(b) State-owned facilities or local health departments shall be used for meeting rooms and lodging if available, practical, and economical.

(20)[~~(19)~~] A claimant who attaches the hotel's or motel's preprinted, receipted bill shall be reimbursed for the claimant's actual cost of lodging, subject to the following provisions:

(a) Reimbursement at a Kentucky state park shall be at the park's actual rate.

(b) The local health department shall not pay for lodging located within forty (40) miles of a claimant's residence or work station without approval of the public health department director.

(c) Lodging accommodations shared with another person or persons, not a local health department employee, shall be reimbursed at the rate for a single room. Lodging accommodations shared with other local health department employees shall be reimbursed on a pro rata basis.

(21)[~~(20)~~] Mileage reimbursement for official use of privately-owned vehicles shall be at the mileage reimbursement rate determined by the Department for Public Health.

(22)[~~(21)~~] With receipts, actual commercial transportation costs shall be reimbursed.

(23)[~~(22)~~] Reimbursement for use of privately-owned aircraft shall not exceed the cost of air coach fare or the privately-owned vehicle rate, whichever is less.

(24)[~~(23)~~] A claimant using camping vehicles for lodging shall be reimbursed for actual expense plus parking or camping charges. A receipt for parking or camping charges shall be submitted.

(25)[~~(24)~~] Actual parking, bridge, and toll charges shall be reimbursable. Toll receipts shall not be required for in-state travel by a two (2) axle vehicle.

(26)[~~(25)~~] Reasonable expenses shall be allowed for baggage handling, for delivery to or from a common carrier or lodging, and for storage. Charges for overweight baggage shall be allowed if the excess was for official business.

(27)[~~(26)~~] Registration fees required for admittance to meetings shall be allowed. An employee shall not claim meal expenses for meals included in the registration fee. A notation shall be made on the travel voucher that the registration fee included the cost of meals. Reimbursement for registration fees and other job-related training may be claimed as "other expenses" on the travel voucher and charged to the appropriate expenditure accounts. Receipts for job-related fees shall be attached to the travel voucher.

(28)[~~(27)~~] Telephone and[~~,~~] fax[~~, and telegraph~~] costs for necessary official business shall be reimbursable[~~allowed~~].

(29)[~~A call to agency central offices shall be made collect, or a telephone credit card or similar telephone card shall be used.~~

~~(28)~~] If justified, other necessary miscellaneous expenses associated with official travel may be allowed by the public health department director. Receipts shall be attached to the travel voucher.

(30)[~~(29)~~] Receipts shall be required for travel expenses over ten (10) dollars except for subsistence expense items.

(31)[~~(30)~~] Subsistence shall include amounts determined to have been spent for meals, taxes, and tips. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work shall require overnight accommodations at a destination more than forty (40) miles from both work station and home and shall also require absence from the work station and home during mealtime. The claimant shall attach to his travel voucher, either his lodging receipts or other credible documentation sufficient for audit.

(32) Local[~~(31)~~] health department employees assigned to attend a function of an organization not under their control may be reimbursed for actual meal costs charged or arranged for by the organization. Receipts for meals shall be attached to the travel voucher.

(33)[~~(32)~~] The local health department may pay for subsistence and related expenses at staff meetings not to exceed four (4) meals per year for an employee. The subsistence expense shall not exceed the department's standard meal reimbursement amount. Travel status shall not be required for staff meeting meals.

(34)[~~(33)~~] Other allowable travel expense reimbursements shall consist of the following:

(a) Expenditures for the actual and reasonable cost of meals provided for district and county board of health members for official board functions, and for meals of guests invited to participate in the official business conducted at these functions;

(b) Travel expenditures of board of health members attending official board of health functions, in accordance with travel policy provisions;

(c) Travel expenditures incurred by board members other than the chairperson if approved by the chairperson or the full board;

(d) Travel expenditures incurred by the chairperson if approved by the vice-chairperson or the full board;

(e) Expenditures for meals and transportation expenses of local health department advisory committee members attending official local health department functions; and

(f) Travel expenses of a person applying for a position that will

designate the applicant as the public health department director for the department, or as the medical director subject to the limits applicable to local health department employees, but no more than one (1) round trip for each applicant.

(35)[~~(34)~~] Expenditures shall be authorized for employee morale and welfare items, as defined in 2 C.F.R. 200.437[~~OMB circular A87~~], in an amount not to exceed twenty-five (25) dollars per employee per fiscal year. Receipts shall be kept for all expenditures.

(36)[~~(35)~~] Expenditures shall be allowed for other items necessary for the maintenance and operation of the local health department, if the expenditure is made in accordance with statutes and administrative policies.

(a) The Department for Public Health may require a local health department to provide adequate justification for any expenditure made by the local health department.

(b) If the justification is determined to be inadequate, appropriate corrective action shall be taken by the Department for Public Health.

Section 6. Purchasing Policies.

(1) Each local health department shall develop and follow formal procedures for authorizing purchases made on behalf of the local health department.

(a) These procedures shall be outlined in the local health department's written internal control procedures.

(b) Written purchase orders (service authorizations for independent contractors) and receiving reports or service verifications shall be used except for utility bills and purchase orders not in conformance with standard business practice.

(2) A local health department shall use[~~at least~~] the following minimum procedures in accordance with 2 C.F.R. 200.322 for purchasing and advertisement for bids:

(a) If an expenditure for a single type of good or service not covered by contract policies is more than $40,000 in a fiscal year, advertisements for bids shall be made in accordance with KRS 424.110-424.150. The Department for Public Health may be contacted for assistance in determining whether an expenditure is for a single type of good or service. The local health department shall:

1. Record, in writing, and maintain for department review:

a. Price quotations received; and

b. Reasons and basis for selecting and placing the order, if the lowest price was not selected; and

2. Select the lowest or[~~and~~] best bid.

(b) If the expenditure for a single type of good or service is $3,000[~~more than $10,000~~] but not greater than $40,000 in a fiscal year, the local health department shall:

1. Obtain three (3) or more price quotations from qualified sources of supply, if available, in the department's normal trade area; and

2. Record, in writing, and maintain for department review:

a. Price quotations received; and

b. Reason and basis for selecting and placing.

(c) If a single type of good or service purchased is less than $3,000, to the extent practicable, the local health department shall distribute purchases equitably among qualified suppliers. Purchases may be awarded without soliciting competitive quotations[~~not greater than $10,000 annually, purchases may be made by local health departments from any available source of supply as long as the maximum value for each purchase is obtained~~].

(d) The requirements for competitive bidding shall not apply to a purchase made under the provisions of a state price contract.

(e) A physician who is the health officer for more than one (1) local health department may purchase supplies and services or technical services on a cooperative purchasing basis, in accordance with the purchasing administrative regulations for local health departments.

(f) A local health department shall not enter into a lease or purchase agreement for nonprofessional services with a local health department employee or a business entity in which a local health department employee owns or controls more than five (5) percent interest, except if determined to be in the best interest of the public and approved in writing by the Department for Public Health.

Section 7. Contracting for Services.

(1) A local health department shall not contract with a provider who is disbarred or suspended by a federal funding agency or by a Kentucky licensure board.

(2) This policy applies to personal services contracts for services of a professional or technical nature not available through the local health department merit system.

(3) Services of a professional or technical nature shall be contracted for in writing in accordance with this policy except:

(a) Nonprofessional emergency repair services of skilled tradesmen shall not require written contracts. Nonemergency services of skilled tradesmen shall be procured in accordance with purchasing policies.

(b) Administrative or management services, financial management services, data processing services, or consulting services, or studies shall not be contracted for if these services can be provided to the local health department by the Department for Public Health.

(4) Allowable services.

(a) The service desired to be contracted for shall be an essential service that[~~which~~] is necessary for carrying out public health services.

(b) A local health department shall not use a personal services contract to substitute for establishing a position in the local health department.

(c) A local health department shall not contract for personal services with an individual who works 1,200 hours or more in a year, except with Department for Public Health approval.

(5) A provider shall not be paid more than the standard hourly rate determined by the Personnel Cabinet. In determining acceptable rates of reimbursement, consideration shall be given to:

(a) The type of service to be provided;

(b) The availability of providers;

(c) The duration of services to be performed;

(d) Rates being paid to regular employees for similar services; and

(e) Comparable rates being paid in the area and other parts of the state for similar services.

(6) A contract shall not be entered into with a provider when a conflict of interest, real or apparent, exists[~~will occur~~].

(a) Conflicts of interest fall into the following categories:

1. Constitutional;

2. Statutory;

3. Common-law; and

4. Department for Public Health policies.

(b) A contract shall not be entered into with a local health department employee or local board of health member, unless authorized in writing by the Department for Public Health, and except for medical or professional services under $10,000.

(c) A county board of health member who is not a member of the district board of health shall not incur a conflict of interest if the district health department contracts for the county board of health member's services.

(d) A contract exceeding $5,000 in a fiscal year shall not be entered into with a professional service corporation that has employees or governing board members as constituents, unless authorized in writing by Department for Public Health.

(7) In drafting a contract, a determination shall be made concerning whether the provider of the service is an "independent contractor".

(a) If it is determined that the individual is not an independent contractor, the local health department shall withhold applicable federal, state, and local taxes and Social Security (FICA), and shall use a standard local health department personal services contract.

(b) If it is determined that the provider is an independent contractor, a standard local health department independent contract shall be used.

(8) A contract:

(a) Shall not exceed one (1) year in duration and shall not contain a clause that[~~which~~] indicates the contract is automatically renewable at the end of the fiscal year;

(b) Shall expire on or before June 30 of each fiscal year unless

approved by the Department for Public Health; and

(c) May be extended into the new fiscal year by filing a formal contract extension, approved by the Department for Public Health.

(9) Either party shall have the right to terminate a contract at any time upon notice to the other party.

(a) A local health department may add a clause to a contract requiring up to a ninety (90) day notice prior to termination.

(b) Confirmation of termination shall be in writing and a copy of the notice of termination shall be provided to the Department for Public Health.

(10) All local health department contracts and amendments are subject to review by the Department for Public Health.

(a) If the Department for Public Health questions the legality, propriety, necessity, rate of compensation, or description of services, in a contract, the department shall notify the local health department of its concerns.

(b) A contract for which clarification is requested by the Department for Public Health shall be put on hold until a review has been completed.

(11) A contract may be modified at any time, and a proposed change shall be accomplished by formal contract amendment.

Section 8. Disposition of Assets, Surplus, or Excess Property.

(1) If one (1) or more counties withdraw from a district health department, the following policies shall apply to the disposition of surplus receipts, assets, and liabilities:

(a) Program restricted surplus receipts or supplies, inventories, or equipment shall be retained by the district health department except in the case of complete dissolution of the district. If the district is dissolved, program restricted surplus receipts and items shall be equitably distributed to the county or counties proportionate to their taxing district or fiscal court participation in the district;

(b) Unrestricted receipts, supplies, and inventories shall be divided among district and withdrawing county boards of health proportionate to the ratio of local taxing district support provided by each county in the year preceding the withdrawal;

(c) Deficits shall be charged to the district and withdrawing county boards of health according to the ratio of local taxing district or fiscal court support provided by each party in the year preceding the withdrawal;

(d) Equipment purchased by withdrawing county boards of health prior to the organization of the district shall be returned to the board which originally purchased the equipment;

(e) Equipment purchased during the operation of the district shall be divided among the district and the withdrawing boards of health according to the ratio of local taxing district or fiscal court support provided by the withdrawing county boards of health to the total local taxing district or fiscal court support of the district in the year preceding the withdrawal:

1. The net inventoried book value of the equipment shall be used in determining the distribution.

2. The Department for Public Health shall approve the final disposition of equipment.

(f) Buildings owned by the district board of health shall remain the property of the district health department. If total dissolution of a district health department occurs, buildings owned by the district shall be sold according to the policies of the Department for Public Health and the proceeds shall be added to the surplus receipts of the district to be divided according to the procedures listed in this subsection; and

(g) The Department for Public Health shall approve the disposition of assets and liabilities.

(2) A local health department may sell or dispose of any real or personal property including intangible property which is not needed or has become unsuitable for use.

(3) The funding source shall be contacted for the exact requirements. Property purchased with restricted funds may have disposal requirements in addition to or instead of the following requirements:

(a) A written determination as to need or suitability of any property of the local health department shall be made, and shall fully describe the property,[;] its intended use at the time of acquisition, and the reasons why it is in the public interest to dispose of the item;

(b) Surplus or excess property may be transferred, with or without compensation, to another governmental agency,[;] or it may be sold at public auction or by sealed bids. The highest bid shall be accepted. Other methods of disposition of surplus or excess property shall not be allowable;

(c) If a local health department receives no bids for surplus or excess property, either at public auction or by sealed bid, or reasonably determines that the aggregate value of the item is less than $500, the property may be disposed of, consistent with the public interest, in any manner determined appropriate by the local health department. A written description of the property, the method of disposal, and the amount of compensation, if any, shall be made; and

(d) Any compensation resulting from the disposal of surplus or excess property shall be deposited in the local health department's bank account. If the property was purchased with restricted funds, appropriate accounting of the compensation received shall be made as required by 2 C.F.R. Part 200 Subpart E[~~OMB Circular A-87, incorporated by reference~~].

Section 9. Bank Accounts and Investments.

(1) Fidelity bonding shall be obtained on local health department employees and board of health members who handle funds of the local health department.

(a) An individual who makes deposits or signs checks or other instruments on local health department checking or investment accounts or certificates shall be bonded.

(b) Employees or board members shall be bonded in an amount sufficient to cover the total amount of funds to which they have access at any one (1) time.

(2) Local health departments may invest and reinvest money subject to their control and jurisdiction in the following investments:

(a) Obligations of the United States and of its agencies and instrumentalities. These investments may be accomplished through repurchase agreements reached with national or state banks chartered in Kentucky,[;] and bonds or certificates of indebtedness of the state of Kentucky and of its agencies and instrumentalities;

(b) A savings and loan association insured by an agency of the government of the United States up to the amount so insured; and

(c) Interest-bearing deposits, or other authorized insurance instruments, in national or state banks chartered in Kentucky and insured by an agency of the government of the United States up to the amount so insured, and in larger amounts if the bank shall pledge as security, obligations as permitted by KRS 41.240(4), having a current quoted market value at least equal to uninsured deposits.

(3) A local health department may hold funds in its local bank account in a federally-insured bank at the minimum level necessary for efficient operations.

(4) Local health department funds shall not be transferred to a public health taxing
district account or to an account not reported in the local health department financial statements.[~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "OMB -87 - Cost Principles for State, Local and Indian Tribes Government", edition 5/04; and~~

~~(b) "OMB-A-102 - Grants and Cooperative Agreement with State and Local Government".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, December 11, 2018)

907 KAR 1:075. Hearings and appeals for individuals with an intellectual disability.

RELATES TO: KRS ***194A.060,*** 205.175, 205.231, 205.237, 210.270

STATUTORY AUTHORITY: KRS 194A.025(1), 194A.050(1), 205.231, 205.237, 205.520(3), 205.531, 42 C.F.R. 431 Subpart E, 42 U.S.C. 1396[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 205.231 and 210.270 require***[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] the Cabinet for Health and Family Services, Department for Medicaid Services, ***to establish[~~has responsibility to provide for~~]*** a system of hearings to be available to Medicaid recipients. ***KRS 194A.050(1) requires the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law.*** This administrative regulation establishes[~~is promulgated to satisfy~~] the hearing ***procedures for[~~requirement of KRS 205.231 and 210.270 relative to~~]*** Medicaid-eligible individuals with an intellectual disability lodged in state institutions who are proposed by the cabinet to be reclassified and transferred. In accordance with KRS 205.237, ***this administrative regulation also establishes[~~the cabinet is also setting~~]*** the maximum fees that may be charged to the recipient for representation by attorneys with regard to the hearings or further resultant appeals.

Section 1. Definitions. (1) "At the time of any action affecting a recipient's claim" means at the time that the cabinet proposes to:

(a) Reclassify the level of care of a recipient; or

(b) Transfer the recipient from the state institution in which the recipient is lodged.

(2) "Authorized representative" means:

(a)1. A parent;[~~,~~]

2. A guardian;[~~or~~]

3. A committee of the recipient; or

4. Other person designated by the recipient including a relative or friend;

(b)[~~or~~] An attorney acting at the request of the parent, guardian,[~~or~~] committee of the recipient,[~~,~~] or[~~an attorney acting~~] on behalf of the recipient; or

(c) A representative of the facility caring for the recipient who is acting on behalf of the recipient.

(3)[~~(2)~~] "Recipient" means an individual:

(a) With an intellectual disability;

(b)[~~,~~] Lodged in a state institution;

(c)[~~,~~] Who is eligible for Medicaid benefits; and

(d) Who is having the cost of his or her care paid for using funds from the Medicaid Program. [~~(3) The phrase "at the time of any action affecting his claim," means at the time that the cabinet proposes to reclassify the level of care of a recipient (as defined in subsection (2) of this section) or to transfer such recipient from the state institution in which he is lodged.~~]

Section 2. Informing the Recipient of the Recipient's[~~His~~] Rights. Each recipient and authorized representative[~~his parent, guardian or committee~~] shall be informed in writing:

(1) At the time of any action affecting the recipient's[~~his~~] claim, of the recipient's[~~his~~] right to a hearing;

(2) Of[~~,~~] the method by which the recipient[~~he~~] may obtain a hearing; and

(3) That the recipient shall[~~that he may~~] be represented by an authorized representative or be self-represented[~~such as legal counsel, relative, friend or other spokesman, or he may represent himself. All federal notice requirements~~].

Section 3. Request for a Hearing.

(1) At the time of any action affecting a recipient's claim, any recipient, or an authorized representative acting on the recipient's[~~his~~] behalf, may request a hearing by filing a written statement clearly indicating a desire for a hearing with[~~either~~] the secretary of the Cabinet for Health and Family Services[~~local office or central office of the Department for Social Insurance a written or oral statement clearly indicating a desire for a hearing. If the request for a hearing is made orally, the oral request shall be reduced to writing within ten (10) days by the person requesting the hearing, with the written request provided to the same office of the Department for Social Insurance which accepted the oral request~~].

Section 4. Time Limitation for Request. The time limitation for a hearing request shall be as established[~~is shown~~] in KRS 210.270.

Section 5. Continuation of Benefits. If[~~When~~] the request for a hearing of a decision to reclassify or transfer any patient with an intellectual disability is received within the thirty (30) day period established[~~, provided for~~] by KRS 210.270:[~~,~~]

(1) Medicaid reimbursement shall continue, until the conclusion of the hearing; and

(2) The recipient shall not be transferred, until the conclusion of the hearing.

Section 6. Acknowledgment of Hearing Requests by the Appeal Panel.

(1) The acknowledgment letter sent by the appeal panel shall contain information regarding the hearing process, including:

(a) The right to case record review prior to the hearing; and

(b) The right to representation.

(2) A subsequent notification shall include the time and place where the hearing will be held.

Section 7. Withdrawal or Dismissal of Request.

(1) The recipient, or the recipient's[~~his~~] authorized representative, may withdraw the recipient's[~~his~~] request for a hearing at any time prior to release of the appeal panel's decision.[~~,~~]

(2) As appropriate, the recipient or the recipient's authorized representative shall be[~~provided, however, he (or his authorized representative) is~~] granted the opportunity to discuss withdrawal with the recipient's[~~his~~] legal counsel or representative, if any, prior to finalizing the action.

(3) Except as provided in subsection (4) of this section, a hearing request shall be dismissed if the recipient fails[~~without prior notification~~] to report for the hearing without prior notification.

(4) A[~~, except that no~~] hearing request shall not be dismissed without extending to the recipient, or the recipient's[~~his~~] authorized representative, the opportunity to establish that the failure to report for the hearing was for good cause.

Section 8. Recipient's Rights Prior to a Hearing.

(1) Each recipient and the recipient's authorized representative, as appropriate,[~~All recipients and their parents, guardians or committees~~] shall be informed of the recipient's right to:

(a)[~~their right to~~] Legal counsel or other representation;[~~,~~]

(b)[~~of the right to~~] Case record review relating to the issue; and

(c)[~~of the right to~~] Submit additional information in support of the claim.

(2) If[~~When~~] the hearing involves medical issues:

(a)[~~,~~] A medical assessment shall be completed by a different provider[~~other~~] than the person or persons involved in the original decision[~~shall be obtained at cabinet expense~~] if the appeal panel considers it necessary pursuant to subsection (3) of this section.

(b) The medical assessment may be requested by:

1. The recipient;

2. The recipient's[~~or his~~] authorized representative;[~~,~~] or

3.[~~by~~] An appeal panel member.

(3) A medical assessment[~~, and~~] shall be considered

necessary by the appeal panel if, in the opinion of a majority of the members of the appeal panel, the available medical information is insufficient for the appeal panel to determine[panel's purposes of determining] whether the recipient should be:

(a) Reclassified; or

(b) Transferred.

(4) The reason for denial shall be set forth in writing if:

(a)[If] A medical assessment at cabinet expense is requested by the recipient; and

(b) The request for a medical assessment is denied by the appeal panel[the reason for denial shall be set forth in writing].

Section 9. Corrective Action Prior to a Hearing.

(1) Prior to a hearing, the chair of the appeal panel may review the case record. If the chair determines that a proposed, pending, or completed action was made erroneously or inappropriately, the chair[If after a review of the case record, but prior to scheduling a hearing, the chairman of the appeal panel determines that action taken or proposed to be taken, is incorrect, he] shall authorize corrective action in the form of:

(a) Continuing assistance; or

(b) Eligibility.

(2) Except as provided in subsection (3) of this section, following a corrective action pursuant to subsection (1) of this section, the hearing request shall[then] be dismissed.

(3) A hearing request shall be[,] subject to reinstatement at the request of the recipient or the recipient's[his] authorized representative if that individual feels the corrective action does not fully resolve the issues prompting the hearing request.

(4) Any[The] request for reinstatement pursuant to this section shall[must] be made within twenty (20) days of the notice of the corrective action.

Section 10. Conduct of a Hearing.

(1) A hearing or appeal[Hearings and appeals] relating to a decision[decisions] to reclassify or transfer a person[persons] with an intellectual disability in a state institution[institutions] shall be in accordance with the requirements established[contained] in 42 C.F.R.[C.F.R.] 431 Subpart E (431.200 through 431.250),[dated November 1, 1991, herein incorporated by reference, and] KRS 210.270, and, as necessary, KRS Chapter 13B.

(2) The appeal panel shall be appointed as required by KRS 210.270.

(3) A hearing officer[A copy of the incorporated material shall be available for review during regular working hours in the commissioner's office, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601 from 8 a.m. through 4:30 p.m. Eastern Time, Monday through Friday. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

(1) All hearing officers] of the Cabinet for Health and Family Services Administrative Hearings Branch shall be[are] designated as the cabinet representative, in accordance with KRS 210.270(6)[representatives of the Secretary, Cabinet for Health and Family Services, to the appeal panel established in KRS 210.270].

(4) The hearing officer shall conduct the hearing in accordance with KRS 13B.080 and 194A.025.

(5)[(2) The hearing officers shall serve as the chairman of each appeal panel established in KRS 210.270, and as chairman will conduct the proceedings of the appeal panel and make any and all rulings on procedural matters at, before, or after the hearing.

(3) The chairman of the appeal panel is, pursuant to the authority of KRS 194.025, delegated the authority to administer oaths and affirmations, examine witnesses and parties who appear at the hearing, and issue subpoenas to compel the attendance of any witness or the production of books, papers, correspondence, memoranda and other records which he feels are necessary and relevant for determining the proper level of care of the patient or whether the patient should be transferred.

(4)] The chair[chairman] of the appeal panel may[, at his discretion,] direct or grant a continuance of a hearing in order to secure necessary evidence.

(6) In accordance with KRS 194A.060 and 205.175,[(5)] all members of the appeal panel shall be required to:

(a) Maintain the confidentiality of:

1. The hearings;

2. The[,] records;

3. The[,] reports; and

4. All other documents related to the appeal panel; and

(b) Safeguard all information relating to:

1. The recipient; and

2. Any authorized representative[the patients and their parents, guardians and committees in accordance with KRS 194.060 and 205.175].

(7)[(6)] The chair[chairman] of the appeal panel shall be responsible for:

(a) Maintaining the official records of a patient's case before the appeal panel;

(b)[,] Receiving a notice of appeal;

(c)[,] Acknowledging the appeal;

(d)[,] Taking and recording the vote of the appeal panel; and

(e) Sending notice of the decision to the:

1. Recipient; or

2. Authorized representative[notifying the parent, guardian or committee of the decision].

(8)[(7)] Following the hearing, the chair[chairman] of the appeal panel shall:

(a) Take the vote of the appeal panel; and

(b) Assign the task of writing the decision to the chair or any other member of the appeal panel[assign to himself or any other member of the appeal panel the task of writing the decision].

(9)[(8)] The decision of the appeal panel shall:

(a) Be in writing;

(b)[,] Include a finding of facts;

(c)[,] Identify laws and administrative regulations that[which] support the decision;

(d)[,] Be sent to the appealing party within ninety (90) days from the date of the request for the hearing;[,] and

(e) Advise the recipient or authorized representative[parent, guardian or committee] of the right to appeal the decision in the manner prescribed by KRS 210.270(7).

(10)[(9)] The recipient, the recipient's[his] representative, and any other party to the hearing may:

(a) Present evidence pertinent to the issue on which the adverse action was, or is proposed to be, taken;[,] and

(b) Advance any arguments without undue interference.

(11)[(10)] The chair[chairman] and other members of the appeal panel shall, if necessary to secure full information on the issue, examine each party who appears and the party's[his] witnesses.[The appeal panel may take any additional evidence which it deems necessary; but if additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting such additional evidence.

(11) The parties to the hearing, with the consent of the appeal panel, may stipulate the facts involved, in writing. The hearing may be decided on the basis of stipulation or the appeal panel may schedule a hearing and take additional evidence as is deemed necessary.

(12) All hearings shall be conducted informally and in a manner designed to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All facts relevant to the issue appealed shall be considered and passed upon.]

Section 11.[Hearings on other Issues. Hearings on issues other than patient reclassification, or transfer of a person with an intellectual disability in Medicaid reimbursement status in state institutions shall be conducted in accordance with the provisions of 904 KAR 2:055.

Section 12.] Limitation of Fees.

(1) The cabinet, and its officers and employees, either in their official or personal capacity, shall not be liable for payment of any attorney's fee. In accordance with KRS 205.237, the fee an attorney may charge an individual shall[may] not exceed the

following:

(a) Seventy-five (75) dollars for preparation and appearance at the hearing before an appeal panel;[.]

(b) $175 for preparation and presentation, including pleadings and appearance in courts, of appeals to the Circuit Court;

(c) $300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals; and[.]

(d) $300 for preparatory work and briefs and all other matters incident to appeals to the Supreme Court.

(2) The fee agreed to by the attorney[representative] and his or her client within the[above] maximums established pursuant to subsection (1) of this section shall be deemed to have the approval of the cabinet.

(3)(a) Enforcement of payment of the fee shall be a matter entirely between the attorney[counsel or agent] and the recipient.

(b) The fee shall not be deducted, either in whole or in part, from benefit checks that[which] may be due and payable to the recipient.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 5, 2018

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, December 11, 2018)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS ***[13B,]*** 199.011, 199.640-199.680, 199.801, 600.020(25), 605.090(1)(b), (d), 610.110, 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

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. KRS 199.641(4) ***and 605.090(1)(d) authorize the cabinet to establish by administrative regulation[requires the cabinet to establish]*** the rate setting methodology and the rate of payment for[nonprofit] child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations ***establishing[prescribing]*** conditions under which the cabinet may place a child committed to the Department of Juvenile Justice***[,]*** or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon ***the conditions established by[such conditions as]*** the cabinet***[may prescribe]***. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 199.011(3)[(2)].

(2) "Child-caring facility" or "facility" is defined by KRS 199.011(5)[199.641(1)(b)].

(3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).

(4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b)[means the Department for Community Based Services or the department's agent].[(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.]

(5) "Emergency shelter" is defined by KRS 600.020(25).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation.

(11) "Model program cost analysis" is defined by KRS 199.641(1)(c)[(d)].

(12) "Placement coordinator" means an individual whose responsibilities are ***established[described]*** in KRS 199.801.

(13) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(14)[(13)] "Time study" is defined by KRS 199.641(1)(d)[(e)].

(15)[(14)] "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement.

(1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age ***at the time[when]***:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs, including documentation indicating the child's medically complex status if the child is medically complex;

(e) Mental health needs including:

1. Behavioral health; and
2. Diagnosis and treatment;

(f) Medications;

(g) History of substance abuse, high risk, or other significant

behavior including:

1. Sexual acting out; and

2. Legal history, status, or delinquency behavior patterns;

(h) Out-of-home care placement information including:

1. Reason for entering out-of-home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Educational functioning, grade level, and any special educational need;

(k) Religious background and practices; and

(l) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);

2. Child Behavior Checklist For Ages 6-18 (Achenbach); or

3. Another tool pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)***[(A)]***.

(3)(a) If a child needs placement within the level of care system, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the[~~district~~] placement coordinator.

(b) The[~~district~~] placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement ***in accordance with KRS 199.801 and 922 KAR 1:370***, a cabinet staff person shall:

(a) Complete the DPP-114, ***Private Child Caring and Child Placing*** Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;

(b) Arrange transportation for the child to the placement; and

(c) Notify the[~~district~~] placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

(a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and

(b) Inform the[~~district~~] placement coordinator of the location and date of placement.

(6) The[~~district~~] placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older or any child designated as medically complex:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, to the department; or

2. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, to the department and the child-caring facility or the child-placing agency;

(3) Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b)1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency;

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes; and

(7) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the private child-caring facility or private child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

(1) A Level I child shall be a child who requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child shall be a child who:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence if the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child shall be a child who:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child shall be a child who:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates.

(1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the ***"***model program cost analysis***"*** defined ***by[at]*** KRS 199.641(1)(c)[~~(d)~~].

(b) Each private**[, nonprofit]** child caring facility **and child-placing agency** shall report to the cabinet annually, on the DPP-888, ***Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities[cost report and time study and instructions]***.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined***[as follows]***:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private**[, nonprofit]** child-caring facilities **and child-placing agencies**; and

b. Level of care of children served by private**[, nonprofit]** child-caring facilities **and child-placing agencies** that contract with the cabinet.

(b)1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes ***established[described]*** in paragraph (a) of this subsection; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) ***At the time[When]*** the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

(a) Reduced length of stay in out-of-home placement;

(b) Increased safety from child abuse or neglect;

(c) Increased number of children moving into and remaining in permanent placement;

(d) Increased number of children and their families cared for in close proximity to their home communities;

(e) Increased number of children reunified with their families;

(f) Increased accountability for success in after care; or

(g) Decreased reentry into state custody.

Section 6. Residential Care.

(1) A child-caring facility in the levels of care system shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

(a) Level I – $51.19;

(b) Level II - $61.52;

(c) Level III - $109.71;

(d) Level IV:

1. $183.00[~~$175.87~~]; or

2. $193.50[~~$183.00~~] on or after August[~~October~~] 1, 2018[~~2016~~]; and

(e) Level V:

1. $236.60[~~$218.99~~]; or

2. $256.70[~~$236.60~~] on or after August[~~October~~] 1, 2018[~~2016~~].

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) For a child-caring facility with a treatment license:

1. $115.31 per day[~~for a child-caring facility with a treatment license~~]; or

2. $126.80 per day on or after August 1, 2018; or

(b) For a child-caring facility without a treatment license:

1. $101.41 per day; or

2. $111.60 per day on or after August 1, 2018[~~for a child-caring facility without a treatment license~~].

(2) If a **child with an assigned level of care[~~child's treatment placement is disrupted and the child~~]** enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care**[~~for residential care during the previous placement,~~]**

pending results of the next-scheduled utilization review;

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency.

(1) The basic daily rate for foster care shall be $44.82.

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - $76.10;

(b) Level III - $83.16;

(c) Level IV - $101.23; and

(d) Level V - $139.96.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount ***established[~~specified~~]*** in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements.

(1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the disability or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms ***established[~~specified~~]*** in Section 2(2)(l) of this administrative regulation; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:

a. Consisting of:

(i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or

(ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)***[~~(A)~~]***; and

b. By the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

a. On a quarterly basis, for a private child care residential placement; or

b. On a semiannual basis for a foster care placement;

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports ***established[~~specified~~]*** in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as ***established[~~specified~~]*** in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports ***established[~~specified~~]*** in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day, the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as ***established[~~specified~~]*** in Section 12 of this administrative regulation.

Section 12. Redetermination.

(1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information ***that[~~which~~]*** supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;

2. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

3. CRP-4, Children's Review Program Notice of Level of Care Redetermination;

4. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

5. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment.

(1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as ***established[~~specified~~]*** in Section 2(2)(l) of this administrative regulation.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as ***established[~~specified~~]*** in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution.

(1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", 6/01;

(c) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", **10/18[~~11/14~~]**;

(d) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 11/14;

(e) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", **10/18[~~11/14~~]**;

(f) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment", **10/18[~~11/14~~]**;

(g) "CRP-7, Children's Review Program Application ***for[~~of~~]*** Level of Care Payment (ALP)", 11/14;

(h) "DPP-114, ***Private Child Caring and Child Placing*** Level of Care Schedule", 8/18[~~5/17~~];

(i) "DPP-886, Private Child Care Client Inter-agency Referral Form", **10/18[~~10/04~~];**

(j) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the ***Annual*** Cost Report ***and*** Time Study***[~~Codes and Definitions, and Instructions for the Time Study,~~]*** for Child***[-]*** Caring and Child***[-]*** Placing Programs and Facilities", **10/18[~~10/04~~]**; and

(k) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", 1990.

(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.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at 4 p.m.

CONTACT PERSON: Chase Coffee, 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 502-564-7091, email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

704 KAR 003:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (d), 158.142, 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d), 158.142

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky[~~core~~] academic standards incorporated by reference in 704 KAR 003:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. Definitions. (1) **[~~"Academic readiness" and "career readiness" shall have the same meaning as described in 703 KAR 5:270~~**.

(2)][~~(1)~~] "Early graduation" means meeting the competency-based criteria outlined in this administrative regulation and doing so in three (3) academic years or less.

(2)[~~(3)~~] [~~(2)~~] "Early Graduation Certificate" means a certificate, awarded by the district and signed by the principal and superintendent, that shall make the recipient eligible for a scholarship award equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level, to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools.

(3)[~~(4)~~] "Essential workplace skills" as described in KRS 158.1413.

(4) "Graduation prerequisite" means the requirements which will demonstrate basic competence in reading and mathematics.

(5) "Graduation qualifier" means a criterion which students have to meet in order to qualify for high school graduation.

(6)[~~(5)~~] "Individual Education Program" or "IEP" shall have the same meaning as set forth in 707 KAR 1:002.

(7)[~~(6)~~] "Individual Learning Plan" or "ILP" shall have the same meaning as set forth in 704 KAR 19:002.

Section 2. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address **the content as provided in the Kentucky academic standards for career studies set forth at 704 KAR 003:303 and 704 KAR Chapter 8.[~~Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.~~] The individual learning plan shall not be a substitute for the statement of transition service needs for students with disabilities as provided in 707 KAR 1:320.**

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6)**[Beginning with the graduating class of 2013,]** The development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.[~~Section 2. Each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the Kentucky core academic standards, incorporated by reference in 704 KAR 003:303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:~~

~~(1) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky core academic standards for English and language arts and comply with the following:~~

~~(a) Language arts shall be taken each year of high school; and~~

~~(b) If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;~~

~~(2) Social studies - three (3) credits to include the content contained in the Kentucky core academic standards for social studies;~~

~~(3) Mathematics - three (3) credits to include the content contained in the Kentucky core academic standards for mathematics and include the following minimum requirements:~~

~~(a) Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky core academic standards, incorporated by reference in 704 KAR 003:303;~~

~~(b) A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;~~

~~(c) Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and~~

~~(d) If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;~~

~~(4) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky core academic standards for science;~~

~~(5) Health - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for health;~~

~~(6) Physical education - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for physical education;~~

~~(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content contained in the Kentucky core academic standards for arts and humanities or a standards-based specialized arts course based on the student's individual learning plan;~~

~~(8) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and~~

~~(9) Demonstrated performance-based competency in technology.~~]

Section 3. (1) For students entering grade nine (9) on or before the first day of the 2018-2019 academic year, each student in a public school shall have a total of at least twenty-two (22) credits for high school graduation.

(2) Those credits shall include the content standards as provided in the Kentucky academic standards, set forth at 704 KAR 003:303 and KAR Chapter 8.

(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(4) The required credits and demonstrated competencies shall include the following minimum requirements:

(a) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky academic standards for this content area and comply with the following:

1. Language arts shall be taken each year of high school; and

2. If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(b) Social studies - three (3) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - three (3) credits to include the content contained in the Kentucky academic standards for this content area and include the following minimum requirements:

1. Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky academic standards, set forth at 704 KAR 003:303 and 704 Chapter 8;

2. A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;

3. Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and

4. If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(d) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan;

(h) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(i) Demonstrated performance-based competency in technology.[~~Section 3. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060.~~

~~(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.~~]

Section 4. (1) Beginning with students who enter grade nine (9) on or after the first day of the 2019-2020 academic year, in order to receive a high school diploma, each student in a public school shall:

(a) Complete one or more of the following graduation qualifiers:

1. Satisfy precollege curriculum as established by the Council on Postsecondary Education in 13 KAR 2:020;

2. Achieve benchmark score as established by the Council on Postsecondary Education in 13 KAR 2:020 in one (1) section of a college admissions or placement examination;

3. Complete three (3) postsecondary credit hours or more of a Kentucky Department of Education approved dual credit course with a grade of C or higher;

4. Complete one (1) course and corresponding assessment meeting the following criteria:

a. Advanced placement (AP) with a score of three (3) or higher; or

b. Cambridge Advanced International (CAI) with a score at E or higher; or

c. International baccalaureate (IB) with a score of five (5) or higher;

5. Obtain an industry certification as approved by the Kentucky Workforce Innovation Board;

6. Complete four (4) credits from valid courses within a single Kentucky Department of Education approved career pathway;

7. Complete a Kentucky Department of Education approved process to verify 500 hours of exceptional work experience, or alternative requirements as determined by a student's Admissions and Release Committee and specified in the student's IEP;

8. Complete two (2) years in an approved Kentucky Department of Education or Kentucky Labor Cabinet pre-apprenticeship or apprenticeship program; and

[~~(a) Demonstrate academic readiness or career readiness; and~~]

(b) Earn a total of at least twenty-two (22) credits for high school graduation.

(2) Beginning with students who enter grade nine (9) on or after the first day of the 2020-2021 academic year, in order to receive a high school diploma, each student in a public school shall:

(a) Complete one (1) or more of the following graduation qualifiers:

1. Satisfy precollege curriculum as established by the Council on Postsecondary Education in 13 KAR 2:020;

2. Achieve benchmark score as established by the Council on Postsecondary Education in 13 KAR 2:020 in one (1) section of a college admissions or placement examination;

3. Complete three (3) postsecondary credit hours or more of a Kentucky Department of Education approved dual credit

course with a grade of C or higher;

4. Complete one (1) course and corresponding assessment meeting the following criteria:

a. Advanced placement (AP) with a score of three (3) or higher; or

b. Cambridge Advanced International (CAI) with a score of E or higher; or

c. International baccalaureate (IB) with a score of five (5) or higher;

5. Obtain an industry certification as approved by the Kentucky Workforce Innovation Board;

6. Complete four (4) credits from valid courses within a single Kentucky Department of Education approved career pathway;

7. Complete a Kentucky Department of Education approved process to verify 500 hours of exceptional work experience, or alternative requirements as determined by a student's Admissions and Release Committee and specified in the student's IEP;

8. Complete two (2) years in an approved Kentucky Department of Education or Kentucky Labor Cabinet pre-apprenticeship or apprenticeship program; and

[~~(a) Demonstrate academic readiness or career readiness;~~]

(b) Meet **one (1) of the following graduation prerequisites for reading and one (1) of the following graduation prerequisites for mathematics:**

1. Score at or above the minimum criteria on the tenth grade state-required assessments in reading or mathematics;

a.[~~1.~~] The minimum criteria shall include earning a scale score **in the apprentice student performance level or higher as** approved by the Kentucky Board of Education**[~~as passing~~]**.

b.[~~2.~~] Students who do not meet the minimum criteria on one or both **of the reading or mathematics** assessments may retake the assessments twice annually in the **eleventh and twelfth grades [~~third and fourth years~~]** of high school enrollment.

c.[~~3.~~] The student's first completion of the assessments in grade ten (10) shall contribute to the school's accountability rating; **or [~~and~~]**

2. Score proficient or higher for reading or mathematics on the eighth grade state required assessment; or

3.A student collection of evidence submitted by the principal to the superintendent or designee for review and approval, or in the case of a public charter school submitted by the principal to the Commissioner of Education or designee. The collection of evidence shall include the following:

a. The student's ILP that includes student transcript;

b. If applicable, for students with IEPs, evidence that the student has achieved progress on measurable annual IEP goals as determined by the Admissions and Release Committee;

c. Performance on the tenth grade state-required assessments in reading or mathematics;

d. Appropriate interventions, targeted to the student's needs, provided to the student to ensure support was provided toward meeting the requirements outlined in this administrative regulation;

e. Student work demonstrating the students' competency in reading or mathematics; and

f. The student's post-graduation plans.

(c)[~~(c)~~] Earn a total of at least twenty-two (22) credits for high school graduation.

(3) The required credits shall include the content standards as provided in the Kentucky academic standards, set forth at 704 KAR 003:303 and 704 KAR Chapter 8.

(4) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(5) Each student shall be required to complete the following foundational credits and demonstrated competencies, consisting of ten (10) credits:

(a) English/language arts - two (2) credits (English I and II) to include the content contained in the Kentucky academic standards for this content area;

(b) Social studies - two (2) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - two (2) credits (Algebra I and Geometry) to include the content contained in the Kentucky academic standards for this content area;

(d) Science - two (2) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area; and

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan.

(6) In addition to the foundational requirements outlined in Section 4 (5) of this administrative regulation, every student shall earn a minimum of twelve (12) personalized credits in order to receive a high school diploma. These twelve (12) personalized credits shall include:

(a) Two (2) additional English/Language Arts credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(b) Two (2) additional mathematics credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(c) One (1) additional science credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(d) One (1) additional social studies credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(e) Academic and career interest standards-based learning experiences - six (6) credits including four (4) standards-based learning experiences based on the student's individual learning plan;

(f) Demonstrate performance-based competency in technology **as approved by the Kentucky Department of Education**[~~using the process for awarding performance-based credit outlined in Section 7 of this administrative regulation~~];

(g) Pass a civics test as required by KRS 158.141; and

(h) Beginning with students entering grade nine (9) on or after the first day of the 2020-2021, successfully complete one (1) or more courses or programs that meet the financial literacy **requirements pursuant to KRS 158.1411 and** standards as established by the Kentucky Board of Education.

(7) **Districts shall report individual student data regarding the completion of each graduation qualifier and each graduation prerequisite to the Kentucky Department of Education which may be included in aggregate public reporting.[~~(7)(a) Districts shall develop an appeals process for students who are on track to meet all graduation requirements except the minimum criteria on the reading and mathematics assessments.~~**

~~(b) The appeals process shall be available to students who have at least one (1) unsuccessful attempt to meet the minimum criteria on the reading and/or mathematics assessments.~~

~~(c) The appeals process shall consist of two (2) options.~~

~~1. A student portfolio to include evidence of the following:~~

~~a. The student's ILP that includes student transcript;~~

~~b. If applicable, the student's IEP, that includes evidence that the student has received specially designed instruction and related services in reading and mathematics;~~

~~c. Performance on the required state assessments;~~

~~d. Appropriate interventions, targeted to the student's needs, provided to the student to ensure support was provided toward meeting the requirements outlined in this administrative regulation;~~

~~e. Student work demonstrating the students' competency in reading and mathematics; and~~

~~f. The student's college or career plans; or~~

~~2. The student's eighth grade assessment rating of proficient or higher for reading or mathematics or both reading and mathematics, if applicable.~~

~~(d) Results of the appeals process will not impact the school or district's accountability rating.~~

~~(e) The appeals process shall require the principal to submit the appeal and evidence to the superintendent or designee for review and approval.~~]

(8) The provisions of Section 4 (3) through (7) shall apply to all students referenced in Section 4 (1) and (2).[~~Section 4. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.~~

~~(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.~~

~~(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.~~

~~(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.~~

~~(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.~~

~~(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.~~]

Section 5. (1) Only students who meet the criteria outlined in this section shall be eligible for early graduation.

(a) Those students who meet the criteria for early graduation shall receive from the school district a diploma and an Early Graduation Certificate.

(b) Students wishing to graduate early shall indicate that intent to the school principal at the beginning of grade 9 or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate.

(c) A student's intent to graduate early shall be entered into the student information system by the school district by October 1 of the year in which the student makes the declaration.

(d) Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.

(2) To graduate early and earn an Early Graduation Certificate, a student shall:

(a) Score proficient **or higher** on the **state-required assessments[~~end of course exams~~]** required by the Kentucky Board of Education in 703 KAR 5:200; and

(b) Meet the college readiness exam benchmarks as set by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation.

(3) A student who has indicated an intent to graduate early may participate in the student's state administration of the college readiness exam prior to the junior year, if needed.[~~Section 5. (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky core academic standards, incorporated by reference in 704 KAR 003:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.~~

~~(2) A board of education shall award credit toward high school graduation based on:~~

~~(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or~~

~~(b) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject.~~

~~(3) A local board of education which has chosen to award standards-based performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:~~

~~(a) The content of the course is the same that is established in the Kentucky core academic standards, incorporated by reference in 704 KAR 003:303; and~~

~~(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.~~

~~(4) A board of education which has chosen to award standards-based performance-based credit shall establish a policy for a performance-based credit system that includes:~~

~~(a) The procedures for developing performance-based credit systems and for amending the system;~~

~~(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;~~

~~(c) Objective grading and reporting procedures;~~

~~(d) Content standards as addressed in 704 KAR 003:303, Required core academic standards, and 703 KAR 4:060, Academic expectations;~~

~~(e) The extent to which state-provided assessments will be used in the local performance-based credit system;~~

~~(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and~~

~~(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:~~

~~1. Designed to further student progress towards the individual learning plan;~~

~~2. Supervised by qualified instructors; and~~

~~3. Aligned with state and local content and performance standards.~~

~~(5) A board of education may award standards-based, performance-based credit toward high school graduation for:~~

~~(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Section 1 of this administrative regulation;~~

~~(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;~~

~~(c) Standards-based portfolios, senior year, or capstone projects;~~

~~(d) Standards-based online or other technology mediated courses;~~

~~(e) Standards-based dual credit or other equivalency courses; or~~

~~(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.~~

~~(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.~~]

Section 6. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.[~~Section 6. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for early graduation as outlined in Section 9 of this administrative regulation shall be awarded a graduation diploma.~~

~~(2) The local board of education shall award the diploma.~~]

Section 7. (1) A local board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky academic standards, set forth at 704 KAR 003:303 and 704 KAR Chapter 8, and a rigorous performance standards policy established by the local board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A local board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or

(b) A performance-based credit based on standards, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:

(a) The content of the course is the same that is established in the Kentucky academic standards, set forth in 704 KAR 003:303 and 704 KAR Chapter 8; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A local board of education which has chosen to award performance-based credit shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards set forth at 704 KAR 003:303 and 704 KAR Chapter 8;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Sections 3 and 4 of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year, or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.[~~Section 7. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.~~]

Section 8. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for early graduation as outlined in Section 5 of this administrative regulation shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.[~~Section 8. Beginning with the graduating class of 2013, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 1 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. (1) This course of study shall be based upon student needs and the provisions specified in 704 KAR 003:303, Required core academic standards, and shall be reviewed at least annually.~~

~~(2) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.~~

~~(3) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.~~]

Section 9. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.[~~Section 9. (1) Beginning in the 2014 - 2015 academic year, only students who meet the criteria outlined in this section shall be eligible for early graduation. Those students who meet the criteria for early graduation shall receive from the school district a diploma and an Early Graduation Certificate. Students wishing to graduate early shall indicate that intent to the school principal at the beginning of grade 9 or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate.~~

~~(a) A student's intent to graduate early shall be entered into the student information system by the school district by October 1 of the year in which the student makes the declaration.~~

~~(b) Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.~~

~~(2) To graduate early and earn an Early Graduation Certificate, a student shall:~~

~~(a) Score proficient on the end of course exams required by the Kentucky Board of Education in 703 KAR 5:200; and~~

~~(b) Meet the college readiness exam benchmarks as set by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation.~~

~~(3) A student who has indicated an intent to graduate early may participate in the student's state administration of the college readiness exam prior to the junior year, if needed.~~]

Section 10. (1) If the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Sections 3 and 4 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.

(2) This course of study shall be based upon student needs and the provisions specified in 704 KAR 003:303 and 704 KAR Chapter 8, and shall be reviewed at least annually.

(3) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(4) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.

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).

DR. WAYNE D. LEWIS, Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: December 12, 2018

FILED WITH LRC: December 13, 2018 at 9 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 003:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 003:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation change the minimum high school graduation requirements for students entering ninth grade in the fall of 2019.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation give districts more flexibility to meet the college and/or career readiness needs of their students.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation.

(d) How the amendment will assist in the effective administration of the statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation.

(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, and technical assistance, and monitoring of the implementation of new minimum high school graduation requirements.

(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: Local schools and districts and schools may need to revise their course offerings and available educational opportunities to ensure students have access to content. KDE will need to provide implementation guidance to districts and schools.

(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 the districts to implement this regulation. Staffing patterns may need to be adjusted in light of new requirements. KDE will be impacted by staff time to answer questions and provide guidance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation provides flexibility to districts to meet the needs of students to become transition-ready.

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

(a) Initially: Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

(b) On a continuing basis: Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. That impact will decrease each year of implementation. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: No increase in fees or funding will be needed to implement this regulation.

(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 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3) (b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 003:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(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.

(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? Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

(d) How much will it cost to administer this program for subsequent years? Staffing patterns at the local district may need to be adjusted in light of new requirements and student needs. Local district and school staff time will be impacted through the appeals portfolio review process. Local district budgets will be impacted by the need for resources to support interventions for students who need them. KDE staff time will be impacted creating guidance for implementation and answering questions from the field. That impact will decrease each year of implementation. Assessment cost may increase due to the opportunity for students to repeat reading and mathematics assessments several times.

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 Real Estate Authority
Kentucky Board of Home Inspectors
(Amended After Comments)

815 KAR 006:010. Licensing requirements[~~Home inspector licensing requirements and maintenance of records~~].

RELATES TO: KRS 198B.700, 198B.706, 198B.712, 198B.714, 198B.716, 198B.722, 198B.724, 198B.738

STATUTORY AUTHORITY: KRS 198B.706, 198B.722

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.706(1) and (15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements[~~necessary to enforce the provisions~~] of KRS 198B.700 to 198B.738 and to determine the[~~establish~~] requirements and prescribe forms and applications for licensing.[~~and certification as well as prescribing forms and applications. KRS 198B.706(7) requires the board to promulgate administrative regulations to provide for the inspection of the records of a licensee. KRS 198B.706(11) requires the board to establish continuing education requirements.~~] KRS 198B.722(7) authorizes[~~requires~~] the board to establish requirements for licensure renewal[~~of licenses~~] and authorizes the board to establish an inactive license. This administrative regulation establishes[~~the~~] licensure[~~and record~~] requirements for home inspectors.

Section 1. Application Requirements.

(1) An applicant for an initial[~~a~~] home inspector license shall submit:

(a) A completed Application for Licensure, form KBHI-1;

(b) A two (2) inch by two (2) inch passport photograph taken within the past six (6) months and affixed to the application form;

(c) A certificate of board-approved prelicensing course completion and the applicant's passing national examination test score from an examination administered by a board-approved test provider;

(d) A certificate of liability insurance pursuant to KRS 198B.712(3)(d), verifying continuous coverage;

(e) If applicable, other state or local licensure, certification, registration, or permit;

(f) Two criminal[~~A recent~~] background checks, both completed no more than ninety (90) days prior to the date the board receives the application:

1. A state criminal background check performed by:

a. The Kentucky State Police for Kentucky residents; or

b. A comparable law enforcement agency for non-resident applicants; and

2. A nationwide criminal background investigation check performed by the Federal Bureau of Investigation. If the Federal Bureau of Investigation[~~check performed by the Kentucky State Police and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation. If an applicant submits an application for a nationwide criminal background investigation check performed by the Federal Bureau of Investigation (FBI) and the FBI~~] cannot complete the background investigation check within thirty (30) days of the request[~~. Then~~], the applicant may submit an Optional Affidavit for Licensure, form KBHI 6, and submit the performed nationwide criminal background investigation check within fourteen (14) days of its completion. If an applicant has a felony conviction during the applicant's lifetime, a misdemeanor conviction within the past five (5) years or a pending charge, the applicant shall not use the optional affidavit; and

(g) A nonrefundable fee of $250.[~~(2) An applicant for a home inspector license shall:~~

~~(a) Complete and pass a prelicensing training course approved by the board pursuant to subsection (8) of this section and that is administered by a provider who has been approved by the board in accordance with 815 KAR 006:040 and subsection (8) of this section; and~~

~~(b) Pass an examination conducted by a board-approved test provider.~~]

Section 2. Examination. (1)[~~(3)~~] A request to sit for the examination shall be made directly to the test provider.

(2)[~~(4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.~~

~~(5)~~] A passing score on the examination shall be valid for a period of three (3) years.

(3) If an applicant fails to pass the examination two (2) times, the applicant shall wait at least fourteen (14) calendar days prior to retaking the examination.

(4) If an applicant fails to pass the examination three (3) times, the applicant shall not be eligible to retake the examination until the applicant has again completed and again passed the prelicensing training course required by this administrative regulation before retaking the examination a fourth time[~~,~~] and[~~also for~~] each subsequent examination failure thereafter.[~~(6) Failing the examination.~~

~~(a) An applicant who fails to pass the examination two (2) times shall wait at least fourteen (14) calendar days from the date of the second failed examination prior to retaking the examination.~~

~~(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) calendar days from the date of the third or subsequent failed examination prior to retaking the examination.~~

~~(c) An applicant who fails to pass the examination three (3) times shall not be eligible to retake the examination until the applicant has again completed and again passed the prelicensing training course required by subsection (2)(a) of this section before retaking the examination a fourth time, and also for each subsequent examination failure thereafter.~~]

(5)[~~(6)~~][~~(7) Procedures and conduct.~~

~~(a)~~] The applicant shall follow all written and oral instructions, procedures, and appropriate standards of conduct established by the board or testing service administering the examination.[~~:~~

~~1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and~~

~~2. Written instructions communicated prior to the examination date and instructions communicated at the testing site, either written or oral, on the date of the examination.~~]

(6)[~~(7)~~][~~(b)~~] Failure to comply with all instructions, procedures, and appropriate standards of conduct[~~procedures~~] established by the board or the testing service[~~with regard to conduct at the examination~~] shall be grounds for denial of the application.[~~(8) Course requirements. To be approved by the board, a prelicensing training course shall require a minimum of:~~

~~(a) Sixty-four (64) credit hours of training in the subject areas listed in subparagraphs 1 through 9 of this paragraph for at least the number of hours specified:~~

~~1. Manufactured housing: two (2) hours;~~

~~2. Standards of practice, KRS 198B.700 to 198B.738 and 815 KAR Chapter 6, contracts, report writing, and communications: twelve (12) hours;~~

~~3. Exterior, roofing, insulation, and ventilation: six (6) hours;~~

~~4. Structure and interior: nine (9) hours;~~

~~5. Electrical and plumbing: nine (9) hours;~~

~~6. Heating and air conditioning: six (6) hours;~~

~~7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;~~

~~8. General residential construction: three (3) hours; and~~

~~9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;~~

~~(b) The completion of three (3) unpaid home inspections under the supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and~~

~~(c) An exit examination with a passing score.~~

~~(9) An online prelicensing training course shall not be accepted by the board unless the applicant:~~

~~(a) Is enrolled in a prelicensing course on or before September 4, 2015;~~

~~(b) Maintains continuous enrollment; and~~

~~(c) Completes the prelicensing course no later than six (6) months from September 4, 2015.~~

~~(10) Criminal background checks and other disciplinary proceedings.~~

~~(a) Except as established in subsection (1)(f) of this section, each applicant shall submit a recent background check performed by the Kentucky State Police and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation.~~

~~(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check by a law enforcement agency capable of conducting a state-wide background check from the state where the applicant previously resided.~~]

Section 3[~~2~~]. Reciprocity. An applicant seeking licensure[~~a license~~] through reciprocity in accordance with KRS 198B.714 shall:

(1) Submit a completed Application for Licensure, form KBHI-1, and attachments established in Section 1(1)(b) through (f) of this administrative regulation; and

(2) Pay the fee established in Section 1(1)(g) of this administrative regulation.

Section 4[~~3~~]. Nonresident Licensees. A nonresident licensee shall:

(1) Submit a completed Application for Licensure, form KBHI-1, and attachments established in Section 1(1)(b) through (f) of this administrative regulation;

(2) Pay the fee established in Section 1(1)(g) of this administrative regulation; and

(3) Comply with the provisions established in KRS 198B.716, by submitting a complete Consent to Service of Jurisdiction, form KBHI-8, and this administrative regulation.

Section 5[4]. Renewal of Licenses.

(1) To be eligible for licensure renewal[~~of license~~], an applicant shall hold a valid and current license issued by the board and shall:

(a) Satisfy the continuing education requirements established by 815 KAR 006:040[~~of Section 5 of this administrative regulation~~];

(b) Pay a nonrefundable renewal fee of $200[~~$250~~] per year for each year of licensure;

(c) Submit a completed Application for Licensure Renewal, [~~and~~] Reinstatement or Reactivation, form KBHI-2 with the following attachments[~~and attachments, including~~]:

1. A certificate of completion for continuing education;

2. A certification of insurance showing continuous coverage [~~information~~];

3. If applicable, a letter of good standing from all other jurisdictions where the licensee is licensed[~~other state or local licensure, certification, registration, or permit~~]; and

4. A[~~state-wide~~] criminal background check performed by the Kentucky State Police completed within ninety (90) days of the date the board receives the renewal application; and

(d) Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal.

(2)(a) The renewal application shall be postmarked by the last day of the month in which the licensee is to renew the license.

(b) If the renewal application is postmarked within sixty (60) days after the last day of the licensee's renewal month, the licensee shall:

1. Cease and desist from conducting home inspections, and

2. Pay the nonrefundable renewal fee of $200 and the late renewal fee of $250.

(c) If the renewal application is postmarked between sixty-one (61) and 120 days after the renewal was due, the licensee shall:

1. Cease and desist from conducting home inspections, and

2. Pay the nonrefundable renewal fee of $200, late renewal fee

of $250, and reinstatement fee of $250.[the licensee shall pay a nonrefundable:

1. Renewal fee of $250 per year for each year of licensure; and

2. Late fee of $250.

(3) If a licensee has not submitted a renewal application within sixty (60) days of the last day of the licensee's renewal month, the license shall be cancelled and the licensee shall cease and desist from conducting home inspections.

(4)(a) If a licensee failed to submit a renewal application more than sixty (60) days from the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a completed Application for Licensure Reinstatement, form KBHI-6, within 120 days of the last day of the licensee's renewal month. The licensee shall pay a nonrefundable:

1. Renewal fee of $250 per year for each year of licensure; and

2. Late fee of $500.]

(d)[(b)] If a licensee failed to submit an Application for Licensure Renewal, Reinstatement or Reactivation[or an Application for Licensure Reinstatement] within 120 days of the last day of the licensee's renewal month, the license shall be terminated.[and wants to be licensed, the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS 198B.700 to 198B.738 and 815 KAR Chapter 6.]

(e) If a licensee failed to submit a timely Application for Licensure Renewal, Reinstatement or Reactivation, the licensee may seek reinstatement upon a showing of good cause, which shall include circumstances beyond the control of the licensee.[Section 5. Continuing Education. (1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year. Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education during the license biennial period.

(3) Prior to renewal, the continuing education shall include a minimum of:

(a) Two (2) hours in manufactured housing;

(b) Three (3) hours in KRS 198B.700 to 198B.738 and 815 KAR Chapter 6;

(c) Three (3) hours in report writing; and

(d) Six (6) hours in technical courses, including identification and determination, as applicable within the standards of practice.

(4)(a) The continuing education courses identified in subsection (3)(a) through (c) of this section shall be completed face-to-face. An online continuing education course shall not satisfy the continuing education requirement for each respective category.

(b) The face-to-face requirement identified for the continuing education courses shall be effective beginning the next renewal period following September 4, 2015.

(5) Continuing education shall be obtained from those providers approved by the board as provided in 815 KAR 006:080.

(6) An approved prelicensing course shall satisfy the initial fourteen (14) hour continuing education requirement.

(7) A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection credit course or home inspection continuing education course as applied to the appropriate content area established in subsection (3)(a) through (d) of this section.

(8) A maximum of three (3) hours per license year shall be awarded for appointment to the board for a board member who is licensed and who has attended not less than eighty (80) percent of the board meetings each license year as applied to the content area established in subsection (3)(b) of this section.

(9) A licensee shall not take the same continuing education course during a licensure period.

(10) A licensee may complete the required continuing education hours within the sixty (60) day grace period from the last day of the licensee's renewal month.]

Section 6. Inactive License.

(1)[Placement of a license in inactive status.

(a)1.] To place a license in inactive status, a licensee shall submit a [notarized] statement indicating the desire to have the license placed in inactive status.

(2)[2.] This[notarized] statement shall be mailed to the board and shall be accompanied by:

(a)[a.] A nonrefundable fee of[check for] ten (10) dollars made payable to the Kentucky State Treasurer;

(b)[b.] The licensee's[actual] license card[of the licensee]; and

(c)[c.] A current mailing address for the licensee.

(3) If the licensee no longer has his or her license card, the statement shall be notarized and provide a reason for the missing license card.

(4)[(b)] A licensee in inactive status shall not engage in home inspection activities within the Commonwealth of Kentucky.

(5)[(2)] Renewal of license in inactive status.

(a) A licensee with an inactive license shall pay an annual inactive status fee equal to fifty (50) percent of the current renewal fee for an active license.

(b) Failure to pay this annual fee shall result in the expiration of the license on the last day of the licensee's birth month.

(6)[(3) Insurance coverage for licensees with inactive license.] A licensee with an inactive status license shall not be required to maintain the insurance coverage required by KRS 198B.712(3)(d) [during inactive status].

Section 7. License Reactivation[of Inactive License to Active Status].

(1) A licensee who wishes to reactivate a license shall[contact the board and] submit a completed Application for Licensure Renewal, Reinstatement or Reactivation, form KBHI-2 with the following attachments:

(a) A certificate of completion for continuing education as required by 815 KAR 006:040;

(b) A certification of insurance showing continuous coverage; and

(c) If applicable, a letter of good standing from all other jurisdictions where the licensee is licensed.

(2) The reactivation application shall be accompanied by:

(a) A criminal background check performed by the Kentucky State Police completed within ninety (90) days of the date the board receives the reactivation application; and

(b) A nonrefundable reactivation fee in the amount of ten (10) dollars made payable to the Kentucky State Treasurer.[notarized statement requesting approval to return to active status.

(2) This request shall be accompanied by:

(a) The name of the licensee requesting activation;

(b) The license number of the licensee requesting reactivation;

(c) The birth date of the licensee requesting reactivation;

(d) A current mailing address for the licensee requesting reactivation;

(e) A check in the amount of ten (10) dollars made payable to the Kentucky State Treasurer;

(f) Proof of liability insurance naming the individual in the amount of $250,000 as required by KRS 198B.712(3)(d);

(g) A state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check; and

(h) Proof of continuing education as required by Section 8 of this administrative regulation].

(3) A license that has been inactive for a period of five (5) years from the date of board action shall be considered terminated[expired].

Section 8. Grounds for Denial or Nonrenewal and Appeal Rights.

(1) The board may deny a license or refuse to renew or reactivate a license to an applicant or licensee who:

(a) Has entered a guilty plea to, pled guilty to, or been convicted of a crime directly related to the home inspection profession; or

(b) Has had disciplinary action taken against a home inspector license, certificate, registration, or permit held by the applicant or

licensee in any jurisdiction or state.

(2) The board shall base its decision on the nature, seriousness of the offense or disciplinary action, and passage of time since the offense or disciplinary action.

(3) If the board denies an initial or renewal license application, the board shall issue written notice of the denial to the applicant. The notice shall contain:

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

1. The statutory or regulatory violation; and

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

(b) Notice that the applicant may request an administrative hearing on the pending denial by the board.

(4) The request for an administrative hearing shall be postmarked no more than twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice.

(5) The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(6) If the request for an administrative hearing is not timely filed, the notice of denial shall be effective upon the expiration of the time to request an administrative hearing.[~~Continuing Education Requirements for Licensees in Inactive Status Returning to Active Status. (1) Except as provided by subsection (2) of this section, a licensee with an inactive status who wishes to reactivate the license shall complete the continuing education requirements established in this subsection prior to application to return to active status. The licensee shall complete fourteen (14) hours per year that the license has been inactive, which shall include:~~

~~(a) Two (2) hours in manufactured housing;~~

~~(b) Three (3) hours of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6; and~~

~~(c) Nine (9) hours, in any combination, of:~~

~~1. Electrical;~~

~~2. Plumbing;~~

~~3. Heating, ventilation, and air conditioning;~~

~~4. Roofing; or~~

~~5. Report writing.~~

~~(2) A board approved sixty-four (64) hour prelicensing training course may be used to satisfy the requirement established in subsection (1) of this section.~~

~~Section 9. Maintenance of Records. (1) Address.~~

~~(a) A license holder shall report a change of address to the board in writing within ten (10) days after the change.~~

~~(b) The board shall not be responsible for the license holder's failure to receive notices, communications, or correspondence caused by the license holder's failure to promptly notify the board of a change of address.~~

~~(2) Names.~~

~~(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the change.~~

~~(b) The notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.~~

~~(c) The board shall not be responsible for the license holder's failure to receive notices, communications, or correspondence caused by the license holder's failure to promptly notify the board of a name change.~~

~~(3) Inspection records.~~

~~(a) A licensed home inspector shall retain for at least three (3) years from the date of the inspection:~~

~~1. The written reports;~~

~~2. The contract; and~~

~~3. Supporting documentation, if applicable.~~

~~(b) Records may be retained in retrievable, electronic format.~~

~~(c) The licensee shall provide all records requested by the board within ten (10) days of receipt of the request.~~

~~Section 10. (1) The board may deny a license or refuse to renew or reactivate a license to an applicant or licensee who:~~

~~(a) Has entered a guilty plea to, pled guilty to, or been convicted of a:~~

~~1. Felony; or~~

~~2. Misdemeanor; or~~

~~(b) Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.~~

~~(2) The board shall base its decision on the seriousness of the offense or disciplinary action, the length of time since the offense or disciplinary action, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence.~~

~~Section 11. The board shall deny a license or refuse to renew or reactivate a license to an applicant or licensee who fails to comply with a provision of KRS 198B.700 to 198B.738 or 815 KAR Chapter 6.~~]

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Licensure", Form KBHI-1, 9/2018[~~2/2016~~];

(b) "Application for Licensure Renewal, Reinstatement or Reactivation", Form KBHI-2, 9/2018[~~2/2016~~];

(c)[~~"Application for Licensure Reinstatement", Form KBHI-6, 2/2016; and~~

~~(d)~~] "Optional Affidavit for Licensure", Form KBHI-6[~~7~~], **12/2018 [9/2018]**[~~2/2016~~]; and

(d) "Consent to Service of Jurisdiction", Form KBHI-8, 9/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Home Inspectors[~~Office of Occupations and Professions~~], 656 Chamberlin Avenue, Suite B [~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MITCHELL BUCHANAN, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 12, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

CONTACT PERSON: Heather L. Becker, General Counsel, Ken-tucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing processes and procedures for home inspectors in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for and fees associated with applying for, renewing, deactivating, and reactivating a license to perform home inspections in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706(1)(a) requires the board to promulgate administrative regulations to determine the requirements for and prescribe the form of licenses, applications, and other documents required by KRS 198B.700 to 198B.738.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will provide increased efficiency and consistency for current and prospective licensees in the licensing 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 Amended After Comments amendments to this administrative regulation provide for the untimely renewal of a license where a licensee may seek reinstatement if he or she demonstrates circumstances beyond his or her control which prevented a timely renewal. Additionally, the amendments update the edition date of Form KBHI-6.

(b) The necessity of the amendment to this administrative regulation: Amendments are required to address public comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the process for and fees associated with applying for, renewing, deactivating, and reactivating a license to perform home inspections in Kentucky. The Amended After Comments amendments provide for the untimely renewal of a license where a licensee may seek reinstatement if he or she demonstrates circumstances beyond his or her control which prevented a timely renewal.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will provide increased efficiency and consistency for current and prospective licensees in the licensing process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently regulates roughly 550 home inspectors, and they will be impacted by this administrative regulation. Additionally, entities approved to provide prelicensing and continuing education to the board's licensees will be impacted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None of the regulated entitles identified in question (3) will be required to take any new action to comply with this administrative regulation. Licensees renewing their licenses will receive a cost savings, as the board is lowering the cost to renew a license.

(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 to the regulated entitles identified in question (3) as a result of this administrative regulation. Licensees renewing their licenses will receive a cost savings, as the board is lowering the cost to renew a license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees renewing their licenses will receive a cost savings, as the board is lowering the cost to renew a license. Additionally, licensees will save time as the board has eliminated unnecessary forms. This easing of administrative burden will allow a licensee to focus on his or her trade.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs 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 board is a self-funded agency, funded through licensing fees and late fees. No fees are increased through this administrative regulation. The board is lowering renewal fees for current licensees. No additional funding is required to implement and 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 increased 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 increased any fees: This administrative regulation does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is applied. New licensees are assessed a nonrefundable $250 application fee. Licensees renewing existing licenses are receiving a reduction in renewal costs to a nonrefundable $200 renewal fee for each year of licensure. All other fees and late penalties apply equally to all.

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 Home Inspectors 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 198B.706.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate revenue for the Kentucky Board of Home Inspectors in the form of licensing fees. For the roughly 500 currently licensed home inspectors, each will pay a renewal fee of at least $200 per year. This is a $50 reduction from previous years. Therefore, in the first year, the Kentucky Board of Home Inspectors expects to receive at least $100,000 in revenue in the first year. This administrative regulation will not generate revenue for 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? This administrative regulation will not generate revenue for state or local government in subsequent years. This administrative regulation will generate revenue for the Kentucky Board of Home Inspectors in the form of licensing fees. For the roughly 500 currently licensed home inspectors, each will pay a renewal fee of at least $200 per year. This is a $50 reduction from previous years. Therefore, in the first year, the Kentucky Board of Home Inspectors expects to receive at least $100,000 in revenue in subsequent years. This administrative regulation will not generate revenue for local government in the first year.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): -$25,000

Expenditures (+/-): Neutral

Other Explanation: By lowering renewal fees for existing licensees, the board anticipates a revenue reduction of $25,000 per year.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Board of Home Inspectors
(Amended After Comments)

815 KAR 006:040. Education requirements and providers [~~Home inspector prelicensing providers~~].

RELATES TO: KRS Chapter 165A, 198B.706, 198B.712, 198B.722, 198B.724

STATUTORY AUTHORITY: KRS 198B.706[~~(2), (13), (15)~~], 198B.712[~~(2)(c)~~], 198B.722, 198B.724

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements[~~necessary to enforce the provisions~~] of KRS 198B.700 to 198B.738. KRS 198B.706(11) and KRS 198B.724 require the board to establish requirements for continuing education courses and providers. KRS 198B.712(2)(c) requires an applicant to complete a board-approved course of study prior to seeking licensure. This

administrative regulation establishes continuing education requirements for licensees and the procedures for obtaining board approval to be[being approved by the board as] a prelicensing provider and a continuing education provider.

Section 1. Education[Prelicense Course] Provider Approval.

(1) A prelicensing course provider applicant[An applicant to be a prelicensing course provider] shall submit:

(a)[(1)] A completed Application for Pre-licensing Course Provider, form KBHI-3;

(b)[(2)] A $500 nonrefundable application fee;

(c)[(3)] A copy of:

1. The Certificate of Approval from the Kentucky State Commission for Proprietary Education, if required by KRS Chapter 165A;[,] or

2. Proof that the applicant is exempt from licensure;

(d)[(4)] A syllabus of all courses that will be offered, which shall include the physical location of each laboratory and field training portion of the courses;

(e)[(5)] A list of all course instructors and copies of their current curriculum vitae;

(f)[(6)] A copy of **all advertising material[each brochure]** used to advertise the courses; and

(g)[(7)] A sample of the official transcript.

(2) A continuing education course provider applicant shall submit to the board:

(a) A completed Application for Continuing Education Course Provider, form KBHI-4; and

(b) A $500 nonrefundable application fee.

(3) Upon approval, the board shall assign the provider a provider number. The provider shall use the provider number in the course syllabus, all course materials, and all written advertising materials for the course.

(4) A provider's approval shall expire every two (2) years. Each provider shall resubmit the application and fee required for initial approval.

Section 2. Prelicensing Course Approval.

(1) To be approved by the board, a prelicensing training course shall require a minimum of:

(a) Sixty-four (64) credit hours of training in the subject areas listed in subparagraphs 1 through 9 of this paragraph for at least the number of hours specified:

1. Manufactured housing: two (2) hours;

2. Standards of practice, KRS 198B.700 to 198B.738 and 815 KAR Chapter 6, contracts, report writing, and communications: twelve (12) hours;

3. Exterior, roofing, insulation, and ventilation: six (6) hours;

4. Structure and interior: nine (9) hours;

5. Electrical and plumbing: nine (9) hours;

6. Heating and air conditioning: six (6) hours;

7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;

8. General residential construction: three (3) hours; and

9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;

(b) The completion of three (3) unpaid home inspections under the direct supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and

(c) An exit examination with a passing score to be determined by the provider.

(2) An online prelicensing training course shall not be accepted by the board unless the applicant:

(a) Was enrolled in a prelicensing course on or before September 4, 2015;

(b) Maintained continuous enrollment; and

(c) Completed the prelicensing course no later than six (6) months from September 4, 2015.

Section 3. Continuing Education Course Approval.

(1) To offer a continuing education course, an approved continuing education provider shall submit to the board at least thirty (30) days prior to the next regularly scheduled board meeting:

(a) A completed Application for Continuing Education Course, form KBHI-5;

(b) An official course curriculum and description;

(c) A copy of the course agenda indicating hours of education and breaks;

(d) The number of continuing education hours requested;

(e) A list of all course instructors and copies of their current curriculum vitae; and

(f) An official certificate of completion.

(2) To receive approval, each course shall be in hourly increments from one (1) to six (6) hours.

(a) One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual instruction; and

(b) The board may approve a course for hours different than the provider's request based on the education and experience of the licensed home inspector board members.

(3) The board shall approve continuing education courses that:

(a) **Contribute to the competence[Relate to the technical skills required]** of licensees,

(b) Contain sufficient educational content to improve the quality of licensee performance, and

(c) Comply with this administrative regulation.

(4) If the continuing education course is an online course, the course:

(a) Shall not satisfy the continuing education requirements established in Section 10**(3)(a) and (b)[(2)(a) and (b)]** of this administrative regulation, and

(b) Shall contain an explanation or provide proof that the continuing education provider has an attendance verification process.

(5) Upon approval, the board shall assign the course a number. The course provider shall use the course number in the course syllabus, all course materials, and all written advertising materials for the course.

(6) Prelicensing and continuing education course approval shall be valid for two (2) years from date of issue if no substantial change is made in the course and the board has not imposed discipline upon the provider or its instructors.

(7) Substantial changes, such as a change in the agenda, published course description, or instructor, made in any course shall require a new approval of that course.

(8) A provider shall apply for course approval no later than forty-five (45) days prior to the date of expiration of the original course approval.

Section 4. Denial of Application. Unless a denial is being considered pursuant to 815 KAR 006:030, a course that has been denied may be resubmitted to the board after adopting the suggested modifications provided by the board.[Renewals. A provider's approval shall expire every two (2) years. To renew its approval, each provider shall file the application and fee required for initial approval.]

Section 5. Required Records.

(1) Each provider shall maintain with respect to each course:

(a) The time, date, and location of[place] each course[is] completed;

(b) The name, address, and qualifications of each instructor who teaches any portion of the course and if each instructor has been approved by the board;

(c) The name and address of each person who registered for the course;

(d) The course syllabus used for each course; and

(e) The course evaluations.

(2) The provider shall issue to each person who successfully completes an approved course, a certificate of completion containing:

(a) The name of the attendee;

(b) The name of the provider;

(c) The course name;

(d) The course number;

(e) The date of the course; and

(f) The total number of continuing education[~~contact~~] hours successfully completed in each subject covered by the course.

(3) Each provider shall maintain its records for at least three (3) years after the completion of each course. These records shall be submitted to the board or its agents upon request.[~~(4) Each provider shall submit to the board, in writing, notice of any changes in the information provided in the initial registration of the provider. The notification shall be made within thirty (30) days following the date the change is effective.~~]

Section 6. Qualifications of Course Instructors.

(1) Each course instructor shall be qualified, by education or experience, to teach the course, or parts of a course, to which the instructor is assigned.

(2) Any person with a four (4) year college degree or graduate degree, with at least two (2) years of work experience in that field, shall be qualified to teach a prelicensing or continuing education course in that person's field of study.

(3) To qualify as an instructor based on experience, an individual shall:

(a) Be licensed and have actively practiced for at least five (5) years as a home inspector; or

(b) Have five (5) years of experience in a related field of home inspection or the building sciences.

(4)(a) A licensee whose license is suspended[~~or revoked~~] as a result of board discipline shall not teach or serve as a course instructor during the time the license is suspended[~~or revoked~~].

(b) A licensee whose license has been revoked as a result of board discipline shall not teach or serve as a course instructor after the license has been revoked.

(5) A course provider may request prior approval by the board regarding the qualifications of a particular instructor for a particular course.

Section 7. Course Syllabus.

(1) Each course shall have a course syllabus that identifies:

(a) The name of the course;

(b) [~~The number of the course assigned by the board;~~

~~(c)~~] The name and address of the provider;

(c)[~~(d)~~] A description or outline of the contents of the course; and

(d)[~~(e)~~] The location of each course component.

(2) Each person who registers for a course shall be given the course syllabus prior to the beginning of the course.

Section 8. Course Advertising.

(1) A provider shall not advertise a course as approved until the approval is granted by the board.

(2) A provider shall not include any false or misleading information regarding the contents, instructors, location of classrooms or laboratory courses, or number of continuing education[~~contact~~] hours of any course approved under this administrative regulation.[~~(3) A provider shall include its provider number and course numbers in all advertising.~~]

Section 9. Complaints and Disciplinary Action Against a Prelicensing Provider or Continuing Educational Provider.

(1) A complaint against an approved provider shall be notarized and filed on the Complaint Form, form KBHI-7, which is incorporated by reference in 815 KAR 006:030.

(2) The board may deny, suspend, probate, or revoke the registration of any prelicensing course provider or continuing educational provider for:

(a) Obtaining or attempting to obtain registration or approval through fraud, deceit, false statements, or misrepresentation;

(b) Failing to timely provide complete and accurate information in registration materials;

(c) Falsifying any records, including attendance, regarding courses conducted;

(d) Failing to maintain, or provide to the board upon request, any required records regarding courses;

(e) Failing to take attendance at any approved course; or

(f) Failing to comply with any other duty established for providers in this administrative regulation.

(3) The board shall issue written notice of disciplinary action sent to the prelicensing course or continuing educational provider's address on file with the board and inform the provider:

(a) Of the disciplinary action being taken by the board;

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

1. The statutory or regulatory violation; and

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

(c) That the provider may request an administrative hearing on the board's proposed disciplinary action by written request to the board, postmarked no more than ten (10) calendar days following the date of the board's notice.

(4) If the request for an administrative hearing is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an administrative hearing.

(5) A provider whose approval has been revoked shall not be approved for two (2) years from the date of revocation.

Section 10. Continuing Education for Licensees.

(1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2)(a) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year**[~~from at least five (5) separate courses~~]**.

(b) Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education**[~~from at least ten (10) separate courses~~]** during the license biennial period**[~~, including a minimum of:~~]**

(3) Satisfaction of the educational requirements in Section 10(2)(a) and (b) shall consist of a minimum of:

(a)[~~1.~~] Three (3) hours in KRS 198B.700 to 198B.738 and 815 KAR Chapter 6;

(b)[~~2.~~] Three (3) hours in report writing; and

(c)1.[~~3.~~] Eight (8) hours in **elective[~~technical~~] courses.**

2. Elective courses may be technical or non-technical in subject matter.

3. Technical courses include identification and determination, as applicable within the standards of practice.

4. For a licensee satisfying the education requirement in Section 10(2)(a), non-technical courses shall be limited to three (3) hours of instruction for credit.

5. For a licensee satisfying the education requirement in Section 10(2)(b), non-technical courses shall be limited to six (6) hours of instruction for credit.[~~including identification and determination, as applicable within the standards of practice.~~]

(4)[~~(3)~~] An approved prelicensing course shall satisfy the initial fourteen (14) hour continuing education requirement.

(5)[~~(4)~~] The continuing education courses established in subsection **(3)(a) and (b)[~~(2)(a) and (b)~~]** of this section shall be completed face-to-face. An online continuing education course shall not satisfy the continuing education requirement for each respective category.

(6)[~~(5)~~] A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection continuing education course as applied to the appropriate content area established in subsection **(3)(a) through (c)[~~(2)(a) through (c)~~]** of this section.

(7)[~~(6)~~] A maximum of three (3) hours per license year shall be awarded to a board member who is licensed and who has attended not less than eighty (80) percent of the board meetings each license. The hours awarded shall apply to the content area established in subsection **(3)(a)[~~(2)(a)~~]** of this section.

(8)[~~(7)~~] A licensee shall not receive credit for the same continuing education course during a licensure period.

Section 11. Continuing Education Requirements for Inactive Licensees Returning to Active Status. An inactive licensee who wishes to reactivate his or her license shall complete either:

(1) Fourteen (14) hours of continuing education **consistent**

with Sections 10(3) and 10(8) of this administrative regulation for each[per] year that the license has been inactive **[, which shall include:**

(a) Three (3) hours of KRS 198B.700 to 198B.738 and 815 KAR Chapter 6; and

(b) Eleven (11) hours, in any combination, of:

1. Electrical;

2. Plumbing;

3. Heating, ventilation, and air conditioning;

4. Roofing; or

5. Report writing]; or

(2) A board approved sixty-four (64) hour prelicensing training course.

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

(a)[(1)] "Application for Continuing Education Course Provider", Form KBHI-4, 9/2018[2/2016];

(b) "Application for Continuing Education Course", Form KBHI-5, **12/2018[9/2018]**; and

(c) "Application for Pre-Licensing Course Provider", Form KBHI-3, **12/2018[9/2018]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Home Inspectors,[Division of Occupations and Professions,] 656 Chamberlin Avenue, Suite B[911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MITCHELL BUCHANAN, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 12, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538, email Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prelicensing and continuing education courses, providers, licensees, and prospective licensees.

(b) The necessity of this administrative regulation: KRS 198B.706(11) and 198B.724 require the board to establish requirements for continuing education courses and providers and the applicable requirements to maintain licensure. KRS 198B.712(2)(c) requires an applicant to complete a board-approved course of study prior to seeking licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706(11) and 198B.724 require the board to establish requirements for continuing education courses and providers. KRS 198B.712(2)(c) requires an applicant to complete a board-approved course of study prior to seeking licensure. This administrative regulation establishes continuing education requirements for licensees and the procedures for obtaining board approval to be a prelicensing provider and a continuing education provider.

(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 within the board's enforcement because it establishes the continuing education requirements for licensees and the procedures for obtaining board approval to be a prelicensing provider and a continuing education provider.

(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 Amended After Comments amendments update the supporting documentation required for course submission, review, and approval and amend the type of courses that can be approved to include technical and non-technical courses that contribute to the competency of a home inspector. Additionally, the amendments clarify internal citation errors in the original filing, remove the requirement that a home inspector satisfy his or her continuing education obligation with a certain number of courses, and makes consistent with active licensee continuing education those education requirements of a licensee reactivating a license. Lastly, changes to forms incorporated by reference required amendment to the form revision dates.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary address public comments received during the public comment period for these administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes continuing education requirements for licensees and the procedures for obtaining board approval to be a prelicensing provider and a continuing education provider.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes within the board's enforcement because it establishes the continuing education requirements for licensees and the procedures for obtaining board approval to be a prelicensing provider and a continuing education provider.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently regulates roughly 550 home inspectors, and they will be impacted by this administrative regulation. Additionally, the public will be impacted by this administrative regulation, since it governs the process for filing complaints with the board. Also, entities approved to provide prelicensing and continuing education to the board's licensees will be impacted because approved education providers will have to update their education courses to reflect current law and practice of the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to inform themselves of the new requirements in this administrative regulation regarding their ongoing continuing education requirements. Prospective licensees will have to refer to the amended prelicensing education requirements. Education providers will have to revise their course content to ensure they are educating licensed and prospective home inspectors appropriately.

(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 increased costs for current or prospective licensees to comply with this administrative regulation. Approved education providers may experience *de minimis* costs updating their course materials to reflect current law.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Current and prospective licensees will have to look in just one administrative regulation to learn their educational requirements. Education providers will benefit from a streamlined approval and review process. Licensees completing continuing education courses for renewal will no longer have to take two hours of manufactured housing education. The manufactured housing education materials have not been updated in years and no longer serve an educational purpose.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs 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 funding is necessary to implement and 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 increased 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 increased any fees: This administrative regulation does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Board of Home Inspectors 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 198B.706.

(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 in the first year.

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)

900 KAR 2:040. Citations and violations; criteria and specific acts.

RELATES TO: KRS 13B.040, 13B.050, 13B.080, 13B.090, 13B.110, 13B.130, 216.510 – 216.525,[~~216.550,~~] 216.555 – 216.567,[~~216.557, 216.560, 216.563, 216.565,~~] 216.577, 216A.010(3), 42 C.F.R. 483.10, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 - 1320-8

STATUTORY AUTHORITY: KRS[~~194.050, 216.555, 216.557~~] 216.563, 216.567[~~216.577~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.563 requires the Cabinet for Health and Family Services to promulgate administrative regulations setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590. This administrative regulation establishes the criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 216.510(3).

(2) "Citation" means written notification of a Type A or Type B violation.

(3) "Long-term care administrator" is defined by KRS 216A.010(3).

(4) "Long-term care facility" means the same as "long-term care facilities" defined by KRS 216.510(1).

(5) "Resident" is defined by KRS 216.510(2).

(6) "Type A violation" means a violation, as described by KRS 216.557(1), by a long-term care facility of the administrative regulations, standards, and requirements established by the cabinet pursuant to KRS 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations that present an imminent danger to any resident of a long-term care facility and creates substantial risk that death or serious mental or physical harm to a resident will occur.

(7) "Type B violation" means a violation, as described by KRS 216.557(2), by a long-term care facility of the administrative regulations, standards, and requirements established by the cabinet pursuant to KRS 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations that present a direct or immediate relationship to the health, safety, or security of any resident, but which does not create an imminent danger.

Section 2. Written Citations and Imposition of Penalties.

(1) The cabinet's finding of a Type A or Type B violation shall be:

(a) Communicated to the long-term care facility at the exit conference of an onsite survey; and

(b) Issued as a written citation in the statement of deficiencies, including:

1. The nature of the violation;

2. The statutory provision or administrative regulation alleged to have been violated pursuant to KRS 216.555; and

3. Notice of the right to appeal the:

a. Citation; and

b. Proposed assessment of the civil penalty.

(2) The cabinet shall issue the citation and statement of deficiencies as soon as practicable to the licensee, long-term care administrator, or designated representative by:

(a) Certified mail, return receipt requested;

(b) Personal service; or

(c) Other method of delivery, which may include electronic service.

(3) If the cabinet sends notice of a citation and statement of deficiencies to a long-term care facility electronically, the cabinet shall request that the facility reply immediately upon receipt to confirm that the facility received the citation.

(4) If a long-term care facility fails to reply to the cabinet within one (1) business day after the cabinet sends a citation and statement of deficiencies electronically, the cabinet:

(a) Shall contact the licensee, long-term care administrator, or administrator's designee by telephone to determine receipt; and

(b) May deliver the citation and statement of deficiencies by certified mail or personal service if a second attempt to send the citation electronically is not successful.

(5) The date of the exit conference shall be day one (1) of the time period specified for abatement of a Type A or Type B violation.

(6) The cabinet shall consider the factors **established[~~described~~]** in KRS 216.565 in determining the amount of the initial penalty to be imposed for a Type A or Type B violation.

Section 3. Criteria for Finding a Type A Violation.

(1) The following specific acts or circumstances shall constitute a Type A violation:

(a) The cabinet determines that one (1) or more violations related to resident care or physical plant standards:

1. Resulted in actual harm to a resident; or

2. Represent an imminent danger and create a substantial risk that death or serious mental or physical harm to a resident will occur;

(b) The facility fails to implement a regular program to prevent pressure sores with emphasis on the following:

1. Procedures to maintain clean linens for each resident;

2. Procedures to assure that clothes and linens are cleaned each time the bed or clothing is soiled;

3. Procedures to assure **adherence to nationally recognized clinical practice guidelines or recommendations that shall be in writing and available to direct care staff;**

4. Documentation that direct care staff have received training on nationally recognized pressure ulcer guidelines;

5.[~~that rubber, plastic, or other types of linen protectors are cleaned and completely covered to prevent direct contact with the resident;~~

~~4.~~] Procedures to assist the resident in being up and out of bed as much as **the resident's [~~his or her~~]** condition permits, unless medically contraindicated; and

6. If a resident is bedfast or unable to relieve pressure, procedures that require staff to assist the resident to change positions as often as necessary, but no less than every (2) hours to:

a. Stimulate circulation;

b. Prevent pressure areas, contractures, and decubitus; and

c. Promote the healing of any pressure sores;[~~5. If the resident is unable to move himself or herself, procedures that require staff to change the resident's position as often as necessary, but not less than every two (2) hours;~~]

(c) The facility fails to ensure that a resident who is admitted to the facility without pressure sores does not develop pressure sores, unless the individual's clinical condition demonstrates that they were unavoidable;

(d) If a resident has pressure sores, the facility fails to provide necessary treatment and services to:

1. Promote healing;

2. Prevent infection; and

3. Prevent new sores from developing;

(e) The facility knowingly admits or retains an individual whose needs exceed the facility's capability to care for the resident;

(f) The facility fails to disclose to a resident a serious preventable adverse event that affected the resident;

(g) The cabinet finds **a[~~an actual~~]** violation of a resident's rights**,** pursuant to**[~~: 1.~~]** KRS 216.515 to 216.520**[;]** or**[~~2.~~]** 42 C.F.R. 483.10**, that presents an imminent danger to any resident and creates substantial risk that death or serious mental or physical harm will occur**;

(h) The facility fails to consult a physician if a resident experiences a serious accident or illness;

(i) The facility fails to follow the written instructions of an attending physician, or in case of emergency, verbal order given by the physician or licensed practitioner acting within **the physician or practitioner's[~~his or her~~]** scope of practice during use of a physical restraint or pharmaceutical agent that restricts a resident's movement;

(j) The facility fails to advise the attending physician if an error in medication occurs, the error is not recorded in the resident's file, and correction is not made within one (1) day of the date of discovery;

(k) The facility fails to store all drugs and biologicals in locked compartments under proper temperature controls;

(l) The facility fails to comply with a resident's medically prescribed special diet or dietary restriction, except for special days or celebrations in which the restriction has been lifted and is medically approved;

(m) The facility fails to maintain no less than a three (3) day supply of food in the facility; or

(n) The facility fails to maintain a written fire control and evacuation plan in which staff present and responsible for supervision are familiar.

(2) A long-term care facility that fails to correct a Type A violation within the time specified for correction by the cabinet shall be subject to at least one (1) of the actions **established in[~~described under~~]** KRS 216.577.

Section 4. Criteria for Finding a Type B Violation. The following specific acts or circumstances shall constitute a Type B violation:

(1) The cabinet finds one (1) or more violations related to resident care or physical plant standards that:

(a) Present a direct or immediate relationship to the health, safety, or security of any resident;

(b) Do not create an imminent danger;

(c) May be isolated or occasional; and

(d) Do not represent a pattern or widespread practice throughout the facility;

(2) The facility maintains or admits more residents to a long-term care facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the cabinet;

(3) The facility fails to maintain an active program of pest control for all areas of its physical plant;

(4) The facility fails to serve at least three (3) meals per day with not more than fourteen (14) hours between the evening meal and breakfast, unless an exception is allowed pursuant to the applicable administrative regulations under 902 KAR Chapter 20;

(5) The facility fails to meet the nutritional needs of residents by not complying with the**[~~recommended dietary allowances of the Food and Nutrition Board of the National Academies of Sciences adjusted for age, sex, and activity, and provided in accordance with~~]** physician's orders;

(6) The facility fails to make between meal and bedtime snacks available, unless medically contraindicated;

(7) The facility fails to maintain a complete medical record for each resident with all entries current, dated, and signed;

(8) Except for a long-term care facility with an integrated heating, ventilation and air conditioning system (HVAC system), the facility fails to maintain screens on windows;

(9) The facility fails to offer a nutritional substitute to a resident who refuses food served;

(10) The facility fails to modify the texture or change the consistency of food served based upon a resident's need;

(11) The facility fails 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, 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;

(12) Except in family care homes, the facility fails to assure that cold water and hot water is available for resident use;

(13) The facility fails to assure that the maximum water temperature available for use by a resident does not exceed 110 degrees Fahrenheit;

(14) The facility fails to provide substitutions of equal nutritive value if changes in the menu are necessary; or

(15) The facility fails to have an administrator on staff who is responsible for the operation of the facility, or who fails to delegate responsibility **if absent[~~in his or her absence~~]**.

Section 5. Penalties.

(1) Civil penalties shall be trebled in accordance with the provisions of KRS 216.560(3).

(2) The amount of the initial penalty shall be determined with consideration given to **the[~~those~~]** factors **established[~~identified~~]** in KRS 216.565.

Section 6. Appeals.

(1) Within twenty (20) days of the receipt of the citation and statement of deficiencies **established[~~described~~]** in Section 2 of this administrative regulation, the licensee may file a written request for a hearing with the cabinet secretary.

(2) Upon receipt of the written request for a hearing, the

secretary shall designate a hearing officer in accordance with KRS 216.567(2).

(3) A hearing shall be scheduled and commenced as soon as practicable after receipt of the request for hearing.

(4) Notice of the hearing shall:

(a) Be served on the party pursuant to KRS 13B.050(1) and (2); and

(b) Include the information required by KRS 13B.050(3).

(5) The hearing officer may hold a prehearing conference in accordance with KRS 13B.070.

(6) The hearing shall be conducted pursuant to KRS 13B.080 and 13B.090.

(7) Within sixty (60) days of the closing of the record or hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the official record of the proceeding.

(8) **In addition to the requirements of KRS 13B.130, the official record of the hearing shall include[~~The official record of the hearing shall include the following in addition to KRS 13B.130~~]**:

(a) The notice of citation within the statement of deficiencies or penalty assessed;

(b) Any staff reports, memoranda, or documents prepared by, or for the cabinet regarding the matter under review as introduced at the hearing;

(c) Any information provided by the parties as introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review; and

(e) Upon its completion, the prehearing orders, if any, and the report of the hearing officer containing the:

1. Findings of fact;

2. Conclusions of law; and

3. Final decision.

(9) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.567(3).

(10) An appeal of a Type A or Type B violation shall not be construed to limit the authority of the cabinet to act pursuant to KRS 216.573 or KRS 216.577 for failure to correct the violation in a timely manner.

(11) In addition to the grounds for disqualification established by KRS 13B.040(2)(b), a hearing officer shall not participate in a hearing involving a long-term care facility if the hearing officer has, within the twelve (12) month period preceding the hearing, had any ownership interest, employment, staff, fiduciary, contractual, creditor, or consultative relationship with the facility.[~~The Cabinet for Human Resources is required to publish, after consultation with industry, professional and consumer groups, administrative regulations setting forth the criteria and, where feasible, the specific acts which constitute Type A and B violations. This administrative regulation is designed to set forth the criteria and, where feasible, the specific acts.~~

~~Section 1. Definitions. (1) "Active treatment" means daily participation in accordance with an individual plan of care and services, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.~~

~~(2) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions) and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).~~

~~(3) "Administrator" means the administrator of a long-term care facility.~~

~~(4) "Citation" means a written notification of violation of administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which violation has been classified a "Type A" or "Type B" violation pursuant to this administrative regulation. A citation is not a statement of deficiency.~~

~~(5) "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene and sex education while also meeting his physical and medical needs.~~

~~(6) "Nonambulatory" means unable to walk without assistance.~~

~~(7) "Nonmobile" means unable to move from place to place.~~

~~(8) "Protective device" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.~~

~~(9) "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, and when used in the context of an intermediate care facility for the mentally retarded or developmentally disabled, means any pharmaceutical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment.~~

~~(10) "Type A violation" means a violation by a long-term care facility of the administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type A" violation pursuant to this administrative regulation. Said violation presents an imminent danger to any resident of a long-term care facility and creates substantial risk that death or serious mental or physical harm will occur.~~

~~(11) "Type B violation" means a violation by a long-term care facility of the administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type B" violation pursuant to this administrative regulation. Such violation presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger and which is categorized a "Type B" violation in this administrative regulation.~~

~~Section 2. If, upon inspection of a long-term care facility for quality of care rating or investigation of such facility, the cabinet finds that there exists a "Type A" or "Type B" violation at the facility, a citation shall be issued to the licensee. Said citation shall specify, in writing, the nature of the violation and specify statutory provisions or administrative regulations alleged to have been violated.~~

~~Section 3. Type A Violations. (1) Upon the finding of a Type A violation, the cabinet shall advise the licensee, administrator or his designated representative, in writing, delivered as soon as practicable but no later than three (3) days, of the existence of said violation. Written notification may be delivered either by certified mail, return receipt requested, or by personal service of said notification upon the licensee, administrator or his designated representative. The time for correction of said violation shall begin upon the date written notification is received, or in the event the delivery is refused, upon the date of refusal.~~

~~(2) A "Type A" violation shall be abated or eliminated immediately upon written notification, unless a fixed period of time not to exceed ten (10) days, as determined by and within the discretion of the cabinet, is required for correction.~~

~~(3) A "Type A" violation is subject to a civil penalty in an amount not less than $1,000 nor more than $5,000 for each and every violation.~~

~~(4) Where a licensee has failed to correct a "Type A" violation~~

~~within the time specified for correction, the cabinet shall assess the licensee a civil penalty in the amount of $500 for each day such deficiency continues beyond the date specified for correction.~~

~~(5) Application for an extension of time may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.~~

~~Section 4. (1) The criteria for the conditions which constitute "Type A" and "Type B" violations are:~~

~~(a) The uniform criteria established for rating quality of care in accordance with KRS 216.550;~~

~~(b) The provisions of KRS 216.515 to 216.525; and~~

~~(c) Applicable federal laws and regulations governing the certification of long-term care facilities under Titles 18 and 19 of the Social Security Act.~~

~~(2) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which constitutes an imminent danger and substantial risk of death or serious mental or physical harm to a resident is classified a "Type A" violation.~~

~~(3) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger, is classified a "Type B" violation.~~

~~(4) The criteria are to be reviewed at least quarterly for the purpose of more clearly defining the specific acts or circumstances which constitute "Type A" and "Type B" violations.~~

~~Section 5. (1) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to KRS 216.525, or the applicable federal laws and regulations governing certification of long-term care facilities under Title 18 or 19 of the Social Security Act and which presents an imminent danger and substantial risk of death or serious physical or mental harm to a resident or patient of the long-term care facility shall constitute "Type A" violations.~~

~~(a) In all long-term care facilities.~~

~~1. Persons whose care needs exceed the capability of the facility to provide are knowingly admitted as residents or patients of the facility.~~

~~2. A physician is not available and not consulted in the case of serious accident or illness and such consultation and the response of the facility is not reflected within the resident's or patient's file.~~

~~3. Physical and pharmaceutical restraints are not used in accordance with the written instructions of the attending physician (and in cases of emergency, oral orders of the physician or nursing assessments made pursuant to KRS 314.011(6)(e) and 314.011(10)(e) are not subsequently reduced to writing), dated and placed within the resident's or patient's file.~~

~~4. Protective devices are not used in accordance with the written instructions of the attending physician, dated and within the patient's file.~~

~~5. Except in family care homes, the licensee has no evidence of a current inspection by the state fire marshal indicating the facility complies with the applicable provisions of the life safety code.~~

~~6. The licensee does not maintain a system of heating and cooling capable of attaining a minimum temperature of seventy-two (72) degrees which shall be provided in occupied areas in winter conditions and a maximum temperature of eighty-five (85) degrees which shall be provided in summer conditions, and in cases of emergency, the licensee does not take necessary precautions to protect the health of residents or patients.~~

~~7. In the event of an error in medication, the attending physician is not advised and the error is not recorded within the patient's or resident's file, and correction is not made within one (1) day of the date of discovery.~~

~~8. Prescription medication is not kept under lock.~~

~~9. The resident's or patient's daily diet provided by the facility does not comply with his medically prescribed special diet or dietary restriction (except for special days or celebrations medically approved), said special diet or dietary restriction is to appear in writing within the resident's or patient's file.~~

~~10. There is not at least three (3) days' supply of food in the facility at all times.~~

~~11. The care required by admitted residents retained within the facility exceeds the skill of the licensee to provide.~~

~~(b) Family care homes.~~

~~1. The licensee does not provide twenty-four (24) hour supervision and assistance to the residents.~~

~~2. The licensee is not that person directly responsible for the daily operation of the home and, when temporarily absent, the name of the individual to whom responsibility is delegated is not in writing and available to the cabinet.~~

~~3. When prescription medication is required to be administered by licensed personnel, arrangements are not made in writing to assure the use of said personnel.~~

~~4. Basements in which residents are housed are not constructed for sleeping quarters and have no outside door.~~

~~5. Residents are housed in rooms or detached buildings or enclosures which have not been inspected and approved by the cabinet.~~

~~6. The facility has admitted more than three (3) persons as residents.~~

~~(c) Personal care homes.~~

~~1. Residents of the facility are under the age of sixteen (16) years or are nonambulatory or nonmobile.~~

~~2. The number and classifications of personnel required at the facility are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 020:036 as determined in accordance with 902 KAR 020:036, Section 3(8)(f)2.~~

~~3. One (1) attendant is not awake and on duty on each floor of the facility at all times.~~

~~(d) Intermediate care facilities.~~

~~1. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.~~

~~2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.~~

~~3. The facility does not have personnel to meet the needs of the patients on a twenty-four (24) hour basis, the number and classification of personnel are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 020:051, in accordance with 902 KAR 020:051, Section 3(10)(c)2.~~

~~4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.~~

~~(e) Skilled nursing facilities and nursing facilities.~~

~~1. The licensee does not provide the facility with a director of nursing services who is a registered nurse and who works full time during the day and who does devote full time to the nursing service of the facility.~~

~~2. There is not at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of residents during her tour of duty; when a licensed practical nurse is on duty, no registered nurse is on call.~~

~~3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 020:026, in accordance with 902 KAR 020:026, Section 3(9)(d)2, or 902 KAR 020:300, in accordance with 902 KAR 020:300, Section 15(5). The cabinet shall use the administrative regulation that corresponds to the facility's license.~~

~~4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or services are not contracted for from other community resources.~~

~~(f) Nursing homes (including Alzheimer's).~~

~~1. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community resources.~~

~~2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergency.~~

~~3. The health care of each patient is not under the supervision of a physician and the patient's records do not reflect the frequency of the physician's contacts with the patient.~~

~~4. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 020:048, in accordance with 902 KAR 020:048, Section 3(10)(c)2, or 902 KAR 020:291, in accordance with 902 KAR 020:291, Section 3(10)(c)2. The cabinet shall use the administrative regulation that corresponds to the facility's license.~~

~~(g) Intermediate care facilities for the mentally retarded and developmentally disabled.~~

~~1. The facility does not maintain and does not follow a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a resident is determined to be lost, unaccounted for, or other unauthorized absence.~~

~~2. The facility admits as patients those persons who do not have a physical or mental condition which requires developmental nursing services and an active treatment plan.~~

~~3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hours a day basis. The number and classification required is not determined in a manner consistent with the requirements of 902 KAR 020:086, Section 3(11)(c) and in accordance with 902 KAR 020:086, Section 3(11)(f).~~

~~4. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.~~

~~5. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.~~

~~6. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.~~

~~(2) Pursuant to KRS 216.577, upon a finding that conditions within the facility which constitute the "Type A" violation have not been corrected within the time allowed by the cabinet for correction, the secretary shall take at least one (1) of the following actions with respect to the facility in addition to the issuance of a citation or the assessment of a civil penalty therefor.~~

~~(a) Institute proceedings to compel the facility's compliance with the requirement alleged to have been violated.~~

~~(b) Institute injunctive proceedings in circuit court to terminate the operation of the facility.~~

~~(c) Selectively transfer residents whose care needs are not being adequately met by the long-term care facility.~~

~~Section 6. Type B Violations. (1) A "Type B" violation shall be corrected within a time determined and approved by the Cabinet.~~

~~(2) A "Type B" violation is subject to a civil penalty in an amount not less than $100 nor more than $500, provided, however, that if such violation is corrected within the time specified by the Cabinet, no civil penalty shall be imposed.~~

~~(3) Where a licensee has failed to correct a "Type B" violation within the time specified for correction by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of $200 for each day the deficiency continues beyond the date specified for correction.~~

~~(4) Application for an extension of time may be granted by the cabinet upon a showing by the license that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.~~

~~Section 7. (1) Upon the finding of a "Type B" violation, the cabinet shall advise the licensee, administrator, or his designated representative in writing, delivered as soon as practicable, but no later than five (5) days, of the existence of said violation. Delivery shall be by certified mail, return receipt requested or by personal service to the licensee, administrator or his designated representative. The time within which the citation shall be corrected shall run from the date of receipt of written notification, or in the event said written notification is refused, from the date of refusal.~~

~~(2) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to 216.525, or the applicable federal laws and regulations governing certification of long-term care facilities under Title 18 or 19 of the Social Security Act and which present a direct or immediate relationship to the health, safety or security or any resident but which do not create an imminent danger shall constitute "Type B" violations:~~

~~(a) In all long-term care facilities.~~

~~1. The facility does not have a written fire control and evacuation plan with which those present and responsible for supervision are familiar.~~

~~2. The facility does not maintain an active program of pest control for all areas of its physical plant.~~

~~3. The facility does not serve at least three (3) meals per day with not more then fifteen (15) hours between the evening meal and breakfast and such meals do not meet the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders. Between meal and bedtime snacks are not available, except where medically contraindicated.~~

~~4. The licensee knowingly violates the provision of KRS 216.515 and 216.520.~~

~~5. A complete medical record is not kept on each patient with all entries current, dated and signed.~~

~~6. Patients or residents requiring help in eating are not assisted.~~

~~7. Except for those facilities with an integrated heating, ventilation and air conditioning system (HVAC system) the licensee does not maintain the facility with screens on windows.~~

~~8. Except for family care homes, all food is not procured, stored, prepared, distributed, and served under sanitary conditions consistent with the Kentucky Food Service Code (902 KAR 45:005).~~

~~9. If a patient or resident refuses food served, nutritional substitutions are not offered; the consistency of the food is not prepared with reference to the ability of the individual patient to ingest.~~

~~10. The facility does not implement a regular program to prevent decubiti with emphasis on the following:~~

~~a. Procedures to maintain clean linen of the patient or resident. Clothes and linens are cleaned each time the bed or clothing is soiled. Rubber, plastic or other type of linen protectors are cleaned and completely covered to prevent direct contact with the patient.~~

~~b. Effort is made to assist the patient or resident in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient or resident cannot move himself, he has his position changed as often as necessary but not less than every two (2) hours.~~

~~11. The facility does not keep resident records and patient files confidential in a manner consistent with the requirements of the Kentucky Revised Statutes and administrative regulations.~~

~~12. Except in family care homes, cold water and hot water with a maximum temperature of 110 degrees Fahrenheit are not~~

~~available for resident or patient use.~~

~~13. Meals do not correspond to the posted menus; menus are not planned and posted one (1) week in advance; when changes in the menu are necessary, substitutions do not provide equal nutritive value.~~

~~14. The facility does not have an administrator who is responsible for the operation of the facility and does not delegate such responsibility in his absence.~~

~~(b) Family care homes.~~

~~1. The facility does not have a written procedure for providing or obtaining emergency services.~~

~~2. Telephone service, if available in the area, is not accessible to the residents.~~

~~3. The facility does not have at least one (1) ABC rated fire extinguisher.~~

~~4. The facility does not have one (1) toilet for each six (6) persons in the home, which includes residents receiving care, the licensee and family.~~

~~5. Residents are not provided beds at least thirty-three (33) inches wide and six (6) feet long.~~

~~6. The facility does not comply with the provisions of 902 KAR 020:041, Section 4(4).~~

~~(c) Personal care homes.~~

~~1. The facility does not provide each resident with a bed equipped with springs, a clean mattress, a mattress cover, two (2) sheets and a pillow, together with bed covering as required for the patient's comfort.~~

~~2. The facility uses special purpose areas for the protection or confinement of a resident which are not approved by the cabinet with specification for the use of the area.~~

~~3. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.~~

~~4. The facility does not maintain a program of orientation and in-service training which shall include at least the following component parts:~~

~~a. Policies of the facility with regard to the performance of staff duties;~~

~~b. Services provided by the facility;~~

~~c. Recordkeeping procedures;~~

~~d. Procedures for reporting adult and child abuse, neglect and exploitation to the cabinet pursuant to KRS Chapter 209 and KRS Chapter 620;~~

~~e. Patient rights;~~

~~f. Procedures for proper application of physical restraints;~~

~~g. The aging process;~~

~~h. The emotional problems of illness;~~

~~i. The use of medication;~~

~~j. Therapeutic diets;~~

~~k. Activities of daily living; and~~

~~l. Procedures for maintaining a clean healthful and pleasant environment. A record shall be maintained of each training session indicating topics discussed and staff attendance, by name.~~

~~5. The facility does not provide encouragement and assistance, as necessary, to residents in achieving and maintaining good personal hygiene, including such assistance with:~~

~~a. Washing and bathing the body;~~

~~b. Shaving;~~

~~c. Washing, grooming and cutting hair;~~

~~d. Cleaning the mouth and teeth; and~~

~~e. Cleaning of finger and toe nails.~~

~~6. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.~~

~~(d) Intermediate care facilities.~~

~~1. Each facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:~~

~~a. Positioning and turning;~~

~~b. Exercises;~~

~~c. Bowel and bladder training, when appropriate; and~~

~~d. Ambulation.~~

~~2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.~~

~~3. The facility does not maintain a program to provide encouragement and assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:~~

~~a. Washing and bathing the body;~~

~~b. Shaving;~~

~~c. Cleaning of finger and toe nails;~~

~~d. Cleaning of mouth and teeth; and~~

~~e. Washing, grooming and cutting of hair.~~

~~4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.~~

~~5. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.~~

~~6. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.~~

~~(e) Nursing homes (including Alzheimer's).~~

~~1. The facility does not include a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:~~

~~a. Positioning and turning;~~

~~b. Exercises;~~

~~c. Bowel and bladder training, when appropriate; and~~

~~d. Ambulation.~~

~~2. Each patient shall be provided a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.~~

~~3. Each facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:~~

~~a. Washing and bathing the body;~~

~~b. Shaving;~~

~~c. Cleaning of finger and toe nails;~~

~~d. Cleaning of mouth and teeth; and~~

~~e. Washing, grooming and cutting of hair.~~

~~4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.~~

~~5. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.~~

~~6. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.~~

~~(f) Skilled nursing facilities and nursing facilities.~~

~~1. The facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:~~

~~a. Positioning and turning;~~

~~b. Exercises;~~

~~c. Bowel and bladder training, when appropriate; and~~

~~d. Ambulation.~~

~~2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.~~

~~3. The facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:~~

~~a. Washing and bathing the body;~~

~~b. Shaving;~~

~~c. Cleaning of finger and toe nails;~~

~~d. Cleaning of mouth and teeth; and~~

~~e. Washing, grooming and cutting of hair.~~

~~4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.~~

~~5. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with the requirements of 902 KAR 020:026, Section 4(9), or 902 KAR 020:300, Section 6(5). The cabinet shall use the administrative regulation that corresponds to the facility's license.~~

~~6. The licensee does not provide in-service training to its personnel in accordance with the requirements of 902 KAR 020:026, Section 3(9)(e), or 902 KAR 020:300, Section 15(3)(c). The cabinet shall use the administrative regulation that corresponds to the facility's license.~~

~~(g) Intermediate care facilities for the mentally retarded and developmentally disabled.~~

~~1. Within one (1) month after the admission of each resident, the facility does not enter the following in the resident's record:~~

~~a. A report of the review and updating of the preadmission updating.~~

~~b. A prognosis that can be used in programming and placement;~~

~~c. A comprehensive evaluation and individual program plan designed by an interdisciplinary team.~~

~~2. The facility does not assure that:~~

~~a. Each resident who does not eliminate appropriately and independently must be in a regular systematic toilet training program and a record must be kept of his progress in the program; and~~

~~b. Any resident who is incontinent is bathed or cleaned immediately upon voiding or soiling unless specifically contraindicated by the training program, and all soiled items are changed.~~

~~3. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with requirements of 902 KAR 020:086, Section 4(9), and (10).~~

~~4. The facility does not maintain an orientation and in-service training program which is consistent with the requirements of 902 KAR 020:086, Section 3(11)(n).~~

~~5. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable. Rubber or other impervious sheets shall be placed over the mattress cover when necessary.~~

~~Section 8. Civil penalties assessed for "Type A" and "Type B" violations pursuant to KRS 216.557 shall be trebled when a licensee has received a citation for violating a requirement for which it has received a citation and paid a fine during the previous twelve (12) months.~~

~~Section 9. (1) In determining the amount of any penalty imposed for "Type A" and "Type B" violations, the cabinet shall consider at least the following factors:~~

~~(a) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or administrative regulations were violated;~~

~~(b) The reasonable diligence exercised by the licensee and efforts to correct violations;~~

~~(c) The number and type of previous violations committed by the licensee; and~~

~~(d) The amount of assessment necessary to insure immediate and continued compliance~~

~~(2) All fines collected by the cabinet shall be paid and administered in accordance with the requirements of KRS 216.560.~~]

STEVEN D. DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018
FILED WITH LRC: December 12, 2018 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, , Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, email: stephanie.brammer@ky.gov, phone: 502-564-2888; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216.563, which requires the cabinet to promulgate administrative regulations setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.563, which requires the cabinet to promulgate administrative regulations setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590.

(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 criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

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

(a) How the amendment will change this existing administrative regulation: This amendment updates definitions and clarifies the process for issuing a Type A or Type B violation, requires the cabinet to cite "failure to implement a regular program to prevent pressure sores" as a Type A violation, and clarifies the specific acts and conditions that constitute a Type A or Type B violation. In addition, 900 KAR 2:020 is being repealed concurrent with this amendment because the process for appealing citations or civil penalties is added to this administrative regulation. In response to comments received from the Kentucky Association of Health Care Facilities (KAHCF) during the public comment period, this "amended after comments" regulation updates procedures related to the prevention and treatment of pressure sores, clarifies that a residents' rights violation shall be classified as Type A only if the violation presents an imminent danger to any resident and creates substantial risk that death or serious mental or physical harm will occur, and clarifies that failure to meet the nutritional needs of residents shall be classified as a Type B violation if the facility does not comply with the physician's orders.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make revisions and updates as described in (2)(a) above.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by setting forth the criteria and, where feasible, the specific acts that constitute Type A and B violations as specified by KRS 216.537 to 216.590.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the criteria for Type A and B violations in long-term care facilities and the process for appeal of any decision on citations or penalties as required by KRS 216.567(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the approximately 450 licensed long-term care facilities subject to a

Type A or B violation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require long-term care facilities to take additional actions to comply with this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment assists in the effective administration of the statutes by establishing the criteria for Type A and B violations in long-term care facilities.

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

(a) Initially: This amendment imposes no additional costs on the administrative body.

(b) On a continuing basis: This amendment imposes no additional 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 additional 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 fee or funding 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 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 impacts the Cabinet for Health and Family Services, Office of Inspector General, and licensed long-term care facilities subject to a Type A or B violation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.555, 216.557, 216.560, 216.563, 216.565, 216.567

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 additional 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 amendment will not generate any additional revenue.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 483.10, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 - 1320-8

(2) State compliance standards. KRS 216.563, 216.567

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.10 establishes the resident rights requirements for Medicare and/or Medicaid certified nursing facilities. 45 C.F.R. Part 160, Part 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.

(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 Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 45:005. Kentucky food code.

RELATES TO: KRS 217.005-217.205, 217.280-217.390, 217.990-217.992**, 219.011**

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(c), 217.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 217.125, 211.090(3), and 211.180(1)(c) authorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. This administrative regulation establishes a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health.

Section 1. Definitions. (1) "2013 FDA Food Code" means the 2013 edition of the Food Code published by the U.S. Public Health Service and the U.S. Food and Drug Administration.

(2) "Cabinet" is defined by KRS 217.015(3).

(3) "Complex food preparation" means the process of preparing a food item that includes two (2) or more complete trips through the temperature danger zone between forty-one (41) degrees Fahrenheit and 135 degrees Fahrenheit.

(4) "Kentucky State Plumbing Code" is defined by KRS 318.130.

(5) "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

(6) "Restricted concessions" means a food service establishment, whether mobile or stationary, limited to preparing and serving only menu items and ingredients considered to be low-risk in relation to foodborne illness.

(7) "Statewide mobile food unit" means a fully **[-]**enclosed, self-contained food service establishment that operates from a vehicle or is otherwise mobile[~~(2) "Temporary food establishment" is defined by KRS 217.015(45)~~].

Section 2. Revisions[~~Insertions and Modifications~~] to the 2013[~~2005~~] FDA Food Code. The 2013[~~(1) Except as provided by subsection (2) of this section, the 2005~~] edition of the FDA Food Code shall apply to Kentucky food establishments with the addition of the provisions established in this section[~~subsection~~]. (1)[~~(a)~~] FDA Food Code Subparagraph 2-102.11(B) shall be replaced with the following sentence:[~~.~~] Being a certified food protection manager who has shown proficiency of required information through passing

a test that is part of an accredited program or a local health department class that addresses the food safety issues described in 2-102.11(C) of the 2013[~~2005~~] FDA food code.

(2) FDA Food Code Subparagraph 6-501.115 shall be supplemented with the Kentucky-specific exceptions established in this subsection.

(a) A dog may be allowed in an outdoor dining area if:

1. The outdoor dining area is not fully enclosed; and

2. There is an entrance to the outdoor dining area that is separate from the main entrance and the sole means of entry for a patron with a dog.

(b) Employees shall not permit a dog to come into physical contact with:

1. Food;

2. Serving dishes;

3. Utensils;

4. Tableware;

5. Linens;

6. Unwrapped single-service and single-use articles; or

7. Other food service items that **could[~~may~~]** result in contamination of food or a food-contact surface.

(c) An employee engaged in the preparation or handling of food shall avoid physical contact with a patron dog. If an employee has physical contact with a patron dog, the employee shall wash his or her hands prior to returning to work.

(d) All accidents involving dog vomit, feces, or urination shall be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose shall be made available for use in the designated outdoor dining area.

(e) Signage shall be posted at each entrance to the outdoor dining area stating **that dogs**:

1.**[~~Dogs~~]** May be allowed in the area;

2.**[~~Dogs~~]** Shall not be served food or water in wares used for human consumption;

3.**[~~Dogs~~]** Shall not be allowed on chairs, seats, or tables; and

4.**[~~Dogs~~]** Shall be kept on a leash and under the control of an adult at all times.

(f) The food establishment may refuse to serve the patron with a dog if:

1. The patron fails to exercise reasonable control over the dog; or

2. The dog is behaving in a manner that compromises or threatens to compromise the health or safety of any person present[~~(b) FDA Food Code Subparagraph 3-301.11(D). Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if the permit holder has a written policy that addresses hand washing while processing, preparing, and serving all ready-to-eat foods; and~~

~~(c) FDA Food Code Subparagraph 8-302.11.~~

~~1. A mobile food unit shall not operate for more than fourteen (14) consecutive days at one (1) location.~~

~~2. After the fourteen (14) consecutive days has expired, a mobile food unit shall not operate at the same location until a period of thirty (30) days has elapsed.~~

~~(2) The following provisions of the 2005 FDA Food Code shall not apply to Kentucky food establishments.~~

~~(a) FDA Food Code Subparagraph 3-301.11(D)(1).~~

~~(b) FDA Food Code Subparagraph 3-301.11(D)(2)(a).~~

~~(c) FDA Food Code Subparagraph 3-301.11(6)(e).~~

~~(d) FDA Food Code Subparagraph 8-811.10 (B).~~

~~(e) FDA Food Code Annex 7: Form 3-A, Food Establishment Inspection Report~~].

Section 3. Statewide Mobile Food Units. (1) All food products served in a statewide mobile food unit shall be cooked or prepared in:

(a) A statewide mobile food unit permitted by the cabinet; or

(b) A food service establishment permitted by the cabinet.

(2) Complex food preparation shall not be performed in a statewide mobile food unit.

(3) The statewide mobile food unit shall not serve as a catering operation unless it meets additional permitting requirements **as a catering kitchen**.

(4) The statewide mobile food unit shall be serviced and cleaned every day of operation.

(5) The statewide mobile food unit shall meet the sanitation and plumbing requirements contained in the 2013 FDA Food Code and the Kentucky State Plumbing Code.

(6) Sewage and other liquid wastes shall be removed according to the 2013 FDA Food Code and the Kentucky State Plumbing Code.

Section 4. Restricted Concessions. (1) Restricted concessions may include:

(a) Flavored ice;

(b) Shaved ice;

(c) Snow cones with commercially mixed and packaged flavorings;

(d) Pork rinds;

(e) Roasted peanuts, almonds, pecans, or walnuts, without the shell;

(f) Nacho cheese and chips;

(g) Cotton candy;

(h) Pre-cooked, commercially processed hotdogs, frankfurters, or similar meats (such as bratwurst or Italian sausage) that are grilled, steamed, or boiled on-site;

(i) Pre-packaged sandwiches;

(j) Pre-packaged ice cream or popsicles;

(k) Prepackaged, commercially processed snack foods (such as pretzels or chips) from **a state or federal permitted food manufacturer[~~an approved manufacturing source~~]**;

(l) Shelf-stable, pre-packaged baked goods; or

(m) Commercially produced bottled or canned soft drinks, water, ice tea, or lemonade.

(2) Sanitation requirements.

(a) If public water is available, a restricted concession facility shall follow the requirements of the Kentucky State Plumbing Code.

(b) If public water is not available, a restricted concession facility may operate under temporary sanitation if:

1. There is an adequate amount of stored potable water available;

2. Tubs, buckets, or similar containers for washing, rinsing, and sanitizing equipment large enough to completely immerse the largest item used in operation are available;

3. There are adequate hand washing facilities; and

4. Permanent or portable toilet facilities are conveniently located and have hand washing facilities available.

(c) The restricted concession facility shall provide adequate cold and hot storage for food products and safe storage areas for the storage of dry food and single service articles.

(d) A restricted concession facility shall be constructed or located in such a way that food and utensils **shall be[~~are~~]** protected from potential contamination, including from insects, dust, and debris.

Section 5. Bed and Breakfast. (1) A bed and breakfast establishment shall not be subject to this administrative regulation if:

(a) The bed and breakfast establishment is:

1. In a one (1) family, privately owned residential dwelling unit that has guest rooms or suites used, rented, or hired out for occupancy; and

2. Occupied for sleeping purposes by persons not affiliated by the single-family unit;

(b) The owner or caretaker of the bed and breakfast establishment resides on the premises or property adjacent to the premises during the periods of occupancy;

(c) The number of available guest rooms does not exceed nine (9);

(d) The number of overnight guests does not exceed eighteen (18); and

(e) Breakfast and other meals are served.

(2) Guests shall be informed by placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority.

(3) A bed and breakfast establishment that does not meet all of the requirements established in subsection (1)(a) to (e) of this section shall meet the requirements of this administrative regulation.

Section 6. Inspections and Violations. (1) If an inspection is made of an establishment, the findings shall**:**

(a) Be recorded on Form DFS-208, Food Establishment Inspection Report, **using the:**

1. 1/09 edition for an inspection conducted before July 1, 2019; or

2. 10/17 edition for an inspection conducted on or after July 1, 2019; and

(b)[shall] Constitute a written notice to the permit holder.

(2) A copy of the inspection report shall be **provided[furnished]** to the permit holder or person in charge.

(3) The inspection report form shall summarize the requirements of this administrative regulation and shall set forth a point value for each requirement.

(4) The rating score of the establishment shall be the total of the point value for all violations subtracted from 100.

(5) The inspection report form shall specify a period of time for the correction of the violations found pursuant to this subsection.[the following provisions:]

(a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) [or two (2)] point items shall be corrected prior to the next routine inspection.

(b) If the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) [or two (2)] point items shall be corrected within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of priority [three (3), four (4), or five (5) point] items shall be corrected within a time period [specified by the cabinet but] not to exceed ten (10) days.

(6) The inspection report shall state that:

(a) Failure to comply with a time limit for correction may result in the suspension of a permit; and

(b) An opportunity for appeal shall be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400.

Section 7. Permit Suspension. (1)[(d)] If the rating score of the establishment is less than seventy (70), the establishment shall be issued a Form DFS-214, Notice of Enforcement[notice] of intent to suspend the permit[, using form DFS-214 Enforcement Notice. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed] in accordance with 902 KAR 1:400.

(2)[(e)] A permit shall be suspended immediately upon notice to the permit holder without a hearing if:

(a)[1.] The cabinet has reason to believe that an imminent public health hazard exists;

(b)[2.] The permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves; or

(c)[3.] An inspection of an establishment reveals a rating score of less than sixty (60).

(3)[(f)] A permit holder subject to [the immediate] suspension of a permit may submit a[make application on] Form DFS-215, Application for Reinstatement, in accordance with 902 KAR 1:400[Re-Instatement of Suspended Permit, for the purpose of reinstatement of suspended permit.

(g) All violations concerning a temporary food service establishment shall be corrected within twenty-four (24) hours.

1. If violations are not corrected within the required twenty-four (24) hour time period, the permit shall be immediately suspended].

(4)[2.] The permit holder whose permit has been suspended may request a hearing in accordance with 902 KAR 1:400[using form DFS-212].

(5)[(h)] If a food service establishment is required under the provisions of this administrative regulation to cease operations, it shall not resume operations until a reinspection determines that conditions responsible for the requirement to cease operations no longer exist.[(j) An opportunity for reinspection shall be offered within seven (7) days of the cabinet's receipt of the form DFS-215.

(6) The inspection report shall state that:

(a) Failure to comply with a time limit for correction may result in the suspension of a permit; and

(b) An opportunity for appeal will be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400.]

Section 8[4]. **Methods of Conducting Evaluations of Retail Food Programs. The evaluation and standardization procedures for retail food programs shall be governed by the FDA Procedures for Standardization of Retail Food Safety Inspection Officers, Procedures Manual[Effective Date. An amendment to this administrative regulation]**[This Code and the rules, administrative regulations, provisions, requirements, and orders]**[shall take effect six (6) months]**[one (1) year]**[from the effective date of this administrative regulation]**[approval].

Section 9[5]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Food Code", U.S. Public Health Service, FDA, 2013;[2005.]

(b) "**FDA Procedures for Standardization of Retail Food Safety Inspection Officers, Procedures Manual", U.S. Public Health Service, 2015;**

(c)["DFS-200, Facility Profile", edition 07/01;

(c) "DFS-202, Application for a Permit to Operate a Temporary, Fee Exempt or Farmer's Market Temporary Food Service Establishment", edition 04/07;

(d)] "DFS-208, Food Establishment Inspection Report", edition 10/17;

(d)[(c)][1/09;

(e) "DFS-210, Notice to Correct Violations", edition 02/95;

(f) "DFS-212, Request for Conference", edition 10/96;

(g) "DFS-213, Notice of Conference", edition 08/96;

(h)] "DFS-214, Notice of Enforcement [Notice to Apply for Permit, Order to Cease Operation, or Permit Suspension and Order to Cease Operation]", edition 3/2018[08/96]; and

(e)[(d)][(i)] "DFS-215, Application for Reinstatement[Re-instatement of Suspended Permit"], edition 03/2018[02/95;

(j) "DFS-216, Record of Complaint and Investigation", edition 04/95;

(k) "DFS-218, Concessionaires Food Sanitation Guidelines", edition 05/94;

(l) "DFS-222, Notice and Order of Quarantine", edition 05/94;

(m) "DFS-223, Tag-Quarantined", edition 10/90;

(n) "DFS-224, Label for Sample Collection and Analysis", edition 09/87; and

(o) "DFS-232, Permit to Operate Temporary, Fee Exempt Food Service or Farmer's Market Temporary Food Service Establishment", edition 04/07].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Commissioner
ADAM M. MEIER, Secretary

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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(1) Provide a brief summary of:

(a) What this administrative regulation does: Risk factors such

as food preparation practices and employee behavior are commonly reported by the Centers for Disease Control and Prevention as contributing factors in foodborne illness outbreaks. This administrative regulation establishes a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health.

(b) The necessity of this administrative regulation: KRS 194.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to protect the health of the citizens of the Commonwealth. KRS 217.125 authorizes the cabinet to promulgate administrative regulations for permits to operate food service establishments consistent with the federal act and the Fair Packaging and Labeling Act. This administrative regulation includes the provisions for issuing permits to food service establishments, inspections and violations of the food code, and the provisions for suspension and reinstatement of permits. KRS 211.180(c) authorizes the cabinet to promulgate administrative regulations for the safe handling of food and food products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation adopts the FDA Food Code except where exclusions may be applicable. This administrative regulation also allows for permitting and inspection of food service establishments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a uniform standard for the permitting and inspection of all food service establishments.

(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 amended after comments version of this administrative regulation includes the standardized methods for inspection of retail food programs; clarifies that the inspection process will change beginning July 1, 2019; clarifies the permitting requirements for a statewide mobile food unit that also wants to operate as a catering kitchen; clarifies what constitutes an approved manufacturing source for restricted concessions; and makes KRS Chapter 13A drafting changes.

(b) The necessity of the amendment to this administrative regulation: The amended after comments version is necessary to comply with KRS Chapter 13A drafting rules, to provide clarification on the effective date for the changes to the inspection process, and to ensure standard methods for evaluation of retail food programs are implemented across the state.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.125 requires the cabinet to be consistent with the regulations promulgated under the federal act and Fair Packaging and Labeling Act. By updating the Kentucky Food Code to the 2013 FDA Food Code, the cabinet will be in full compliance with the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The delayed effective date of the changes to the inspection process will ensure food safety inspectors are adequately trained to perform a risk based inspection in compliance with the incorporated FDA Food Code and allow the regulated entities time to make any needed changes to be in full compliance with the code as well.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All food service establishments, retail food stores, temporary food service establishments, restricted food service establishments, non-permanent facilities of these types, including any and all food service activities that constitute food service to the public. Currently there are approximately 25,000 permitted facilities of these types. All county health departments are affected by this administrative regulation as agents of the cabinet with respect to enforcement responsibilities and the Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, is also affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Each entity impacted by this administrative regulation will have to conform to changes not consistent with the previous food code. The differences are with the modernization of the code to include the most up to date scientific knowledge. These changes reflect an emphasis on food protection through risk based procedures rather than solely on facility management. The result is improved food safety through a risk based approach backed by science. Their action will be to learn the changes and put them in place as they apply to their operation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Initially some establishments will have to make minor adjustments in equipment and training for staff. It is difficult to quantify this amount for such a wide-ranging group.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional cost will be incurred with this amendment.

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

(a) Initially: There will be no new cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional ongoing cost 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: Agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation as there are separate requirements for food service establishments, statewide mobile food trucks, and bed and breakfast establishments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local Health Department food inspectors and the Department for Public Health will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The 2013 FDA Retail Food Code is incorporated by reference. KRS 217.125 authorizes the cabinet to promulgate administrative regulations for the issuance of permits for food service establishments and to outline the conditions for suspension and reinstatement of the permit. KRS 194A.050 authorizes the cabinet to promulgate administrative regulations to protect the health of citizens of the Commonwealth. KRS 211.180(1)(c) authorizes the cabinet to promulgate administrative regulations for the safe handling of food and food products.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent

years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? Not applicable

(d) How much will it cost to administer this program for subsequent years? Not applicable

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 45:090. Home-based processors and farmers market home-based microprocessors[~~Farmers markets~~].

RELATES TO: KRS **[~~Chapter 13B,~~]** 217.005-217.215, 217.290, 217.992**, 217B.500 – 217B.900, 21 C.F.R. 113.83, 114.10, 114.83, 21 U.S.C. 343(w)**

STATUTORY AUTHORITY: KRS 194A.050, 217.125(1), [~~217.136,~~] 217.137, 217.138

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125, [~~217.136,~~] 217.137, and 217.138 authorize the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of home-based processors and home-based microprocessors. This administrative regulation establishes a uniform code for the manufacture and marketing of **limited-based[~~limited based~~]** Kentucky grown home microprocessed[~~processed~~] food products at farmers markets, certified roadside stands, or from the microprocessor's[~~processors~~] farm and for the manufacture and marketing of limited home-based processor food products from the home, at a market, roadside stand, community event, or online.

Section 1. Definitions. (1)[~~"Adulterated food and food products" means any food or food product adulterated as defined by KRS 217.025.~~

~~(2)~~] "Cabinet" is defined by KRS 217.015(3).

(2)[~~(3)~~] "Certified roadside stand" means a physical location listed with the Kentucky Farm Bureau for the direct-to-consumer marketing of limited Kentucky grown and produced food products.

(3)[~~(4)~~] "Easily cleanable" means that surfaces are readily accessible and made of a material and finish and so fabricated that residue **can[~~may~~]** be effectively removed by normal cleaning methods.

(4)[~~(5)~~] "Equipment" means articles used in the preparation and processing of food.

(5) "Farmer" is defined by KRS 217.015(59).

(6) "Farmers market" or "farmers market temporary food service establishment" is defined by KRS 217.015(60)[~~means a physical location for the direct-to-consumer marketing of Kentucky grown whole fruit and vegetables, and limited Kentucky-grown processed food products with the set time and locations that are listed with the Kentucky Department of Agriculture~~].

(7) "Food contact surfaces" means those surfaces with which food **can[~~may~~]** come in contact, and those surfaces that drain onto surfaces that **can[~~may~~]** come in contact with food.

(8)[~~"Hand washing" means the following process:~~

~~(a) Wetting hands and forearms with warm running water, 101-120° F~~;

~~(b) Applying antibacterial or antimicrobial soap and thoroughly distributing over hands and forearms;~~

~~(c) Rubbing hands vigorously for twenty (20) seconds, covering all surfaces of the hands, forearms and fingers, paying special attention to the thumbs, backs of fingers, backs of hands and between the fingers;~~

~~(d) Rinsing hands and forearms thoroughly to remove residual soap; and~~

~~(e) Drying hands and forearms with paper towels dispensed from sanitary dispensers.~~

~~(9) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, or conveying of food.~~

~~(10)~~] "Permitted kitchen" means a food service establishment or food processing firm[~~,~~] that holds a valid permit to process food, pursuant to the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215, and issued by the Cabinet for Health and Family Services.

(9)[~~(11)~~] "Potentially **[-]**hazardous food"**[or"]**[~~(~~]**[PHF]**[~~)~~]**["]** means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of Clostridium botulinum, or in raw shell eggs, the growth of Salmonella Enteritidis. "Potentially **[-]**hazardous food" includes**:**

(a) An animal food (a food of animal origin) that is raw or heat-treated;

(b) A food of plant origin that is heat-treated or consists of raw seed sprouts;

(c) Cut melons; and

(d) Garlic-in-oil mixtures that are not modified in a way that makes the product nonpotentially hazardous.

(10)[~~(12)~~] "Primary ingredients" means an agricultural or horticultural product that:

(a) Has been grown, harvested, and processed by the farmer as a predominant ingredient of a food product with the exception of **"**flour**"**, as defined by[~~in~~] KRS 217.015(17), for use in:

1. **"**Bread**"** as defined by[~~in~~] KRS 217.015(2); or

2.[~~, and in~~] Other**[~~acceptable~~]** items **listed[~~outlined~~]** in KRS 217.015(56); and

(b)[~~"Primary ingredients"~~] Does not include oil, vinegar, sugar, and other seasonings or spices used in the production of home processed or microprocessed foods.

(11)[~~(13)~~] "Processing authority" means:

(a) The Food Science Professionals of the University of Kentucky, Department of Agriculture, who review and approve established scheduled processes, for adequate process times and pressures for the size of jar, style of pack, and kind of food being canned, by home-based microprocessors; or

(b) A[~~Other~~] qualified entity[~~entities~~] in accordance with 21 C.F.R. [~~Parts~~] 113.83 and 114.83.

(12)[~~(14) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.~~

~~(15)~~] "Single-service article" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one (1) time or one (1) person use after which they are intended for discard.

(13)[~~(16)~~] "Single-use article" means utensils and bulk food containers designed and constructed to be used once and discarded such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten (10) cans that[~~which~~] do not meet the materials, durability, strength, and clean ability specifications for multiuse utensils.

(14)[~~(17)~~] "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, or sale of food.

(15)[~~(18)~~] "Ware-washing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware.[~~19) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.~~]

Section 2. Limitations on Certain Home-based Processed and Home-based Microprocessed Food Products. (1) A home-based food processor shall produce only those foods as listed in KRS 217.015(56).

(2) A home-based microprocessor shall produce only those foods as **authorized[~~allowed~~]** by KRS 217.015(57).

(3) The following foods shall not be processed or offered for sale by a home-based processor or home-based microprocessor:

(a) Crème filled pies;

(b) Custard;

(c) Custard pies;

(d) Pies with meringue topping;

(e) Cheesecake;

(f) Cream, custard, or meringue pastries;

(g) Raw seed sprouts;

(h) Garlic-in-oil products; and

(i) Pureed baby foods.

(4) Vacuum packaging of food in a container other than a mason-type jar shall be prohibited.

(5) A jam or jelly processed in less than ten (10) minutes shall be filled into a sterile empty jar. Sterilization shall be accomplished by submerging the jar in boiling water for:

(a) At least ten (10) minutes at an altitude of less than 1,000 feet above sea level; and

(b) One (1) additional minute for each additional 1,000 feet elevation above sea level.

(6) If a boiling-water canner is utilized in the production of food by a home-based processor, the canner shall be deep enough so that at least one (1) inch of briskly boiling water will be over the tops of jars during processing.

(7) If an electric range is used for heating, the boiling-water canner shall have a flat bottom and shall be no more than four (4) inches wider than the element on which it is heated.

Section 3. Standards for Home-based Processing. (1) A home-based processor shall maintain basic hygiene, cleanliness, and sanitation while producing home-based processor products and shall comply with the**[~~following~~]** standards **established in paragraphs (a) through (f) of this subsection** during production, packaging, and handling of products for sale**. The home-based processor shall**:

(a) Regularly wash hands with soap and water;

(b) Keep kitchen equipment and utensils used for home-based processing clean and maintained in a good state of repair;

(c) Wash, rinse, and sanitize all food contact surfaces, equipment, and utensils used for food preparation before each use;

(d) Keep children under age twelve (12)**[~~,~~]** and pets or other animals out of the kitchen;

(e) Cease performing any domestic activities in the kitchen, such as family meal preparation, dishwashing, or washing and drying laundry; and

(f) Not produce, package, or handle any home-processed products while infected with a contagious disease or illness.

(2) A home-based processor doing business in the state shall be a resident of Kentucky.

(3) A home-based processor may advertise and accept orders and payments in person, electronically, or via the internet or phone.

(4) A home-based processor shall provide all home-based processed foods direct to the consumer through pick-up or delivery, and at flea markets, farmers **markets[~~market~~]**, festivals, county fairs, craft fairs, and non-profit charity events, or a roadside stand.

(5) Home-based processed food products shall:

(a) Be labeled as required by KRS 217.136(3); and

(b) Contain allergen information as specified by **21 U.S.C. 343(w)[~~federal labeling requirements~~]**.

(6) A home-based processor shall not be required to have grown a primary ingredient for each of their products produced.

(7) Inspection of a home-based processor facility shall be made upon complaint, utilizing Form DFS-252, Home-based Processor/Microprocessor Inspection Report.

Section 4.[~~Home-based Processor Registration. (1) A Kentucky farmer as defined at KRS Chapter 217.015(59) and desiring to grow, harvest, process and market Kentucky grown food products shall make written request for registration on Form DFS-250, incorporate by reference in this administrative regulation and also available at the Web site, http://chs.ky.gov/publichealth/Food-Program.htm, at local health departments, and from University of Kentucky Extension Offices.~~

~~(2) The application for registration shall include the following information and attachments:~~

~~(a) The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and the name and address of the property owner if not owned by the farmer;~~

~~(b) The farmer's name and the address of the primary residence occupied by the farmer.~~

~~(c) Type of water source. Sufficient potable water for the needs of the facility shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet (NREPC), 401 KAR Chapter 8. A farmer with a nonmunicipal water source shall submit to the cabinet documentation from NREPC that the water source is approved; and~~

~~(d) Type of sewage disposal. Sewage, including liquid waste, shall be disposed of by a public sewage system, or if a public sewer system is not available, sewage disposal shall be made into a private sewage disposal system designed, constructed and operated in accordance with the requirements of the cabinet or the Natural Resources and Environmental Protection Cabinet, 902 KAR Chapter 10 and 401 KAR Chapter 5.~~

~~(3) Prior to marketing home-based products, the application for home-based processor, along with the required water source approval, shall be submitted to the cabinet or the local health department. Applications received by local health departments shall be forwarded to the cabinet.~~

~~(4) A home-based processor registration shall be valid for one (1) year, unless previously suspended or revoked, and shall be renewable annually. Home-based processor registrations shall expire March 31 of each year.~~

~~(5) Home-based processors shall follow current good manufacturing practices as outlined in 21 C.F.R. Part 110.~~

~~(6) Home-based processed food products shall be labeled in accordance with KRS 217.005 to 217.215.~~

~~(7) Food products shall only be marketed by the registered home-based processor.~~

~~(8) Food products processed by a home-based processor shall be nonpotentially hazardous. Crème filled pies, custard, custard pies, pies with meringue topping, cheesecake, cream, custard and meringue pastries, raw seed sprouts and garlic-in-oil products shall not be prepared in a home and marketed for sale by a home-based processor. Vacuum packaging of foods in containers other than mason-type jars, shall be prohibited. Canning of pureed baby foods shall be prohibited.~~

~~(9) All jams and jellies processed in less than ten (10) minutes shall be filled into sterile empty jars. Sterilization shall be accomplished by submerging the jars in boiling water for at least ten (10) minutes at altitudes of less than 1,000 feet above sea level. Jars should be boiled for one (1) additional minute for each additional 1,000 feet elevation above sea level.~~

~~(10) Home-based processed food products shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.~~

~~(11) Products processed by home-based processors shall be packaged in food grade material.~~

~~(12) Products processed by home-based processors shall not be used or offered for consumption in a retail food establishment, by internet sales, or sold in interstate commerce.~~

~~(13) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during home-based processing related activities.~~

~~(14) Mop water shall not be disposed of in the dishwashing sink.~~

~~(15) Children under age twelve (12) shall not be permitted in the kitchen area during home-based processing related activities.~~

~~(16) Inspection of home-based processor facilities shall be made for the purpose of:~~

~~(a) Investigating compliance with KRS 217.005 to 217.215 or this administrative regulation; or~~

~~(b) Upon complaint.~~

~~(17) Vehicles used in transporting home-based processed food products shall be maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle compartments used to transport animals shall not be used for transporting home-based processed foods.~~

~~(18) If boiling-water canners are utilized in the production of foods by a home-based processor, the canner shall be deep enough so that at least one (1) inch of briskly boiling water will be over the tops of jars during processing. If an electric range is used for heating, the boiling-water canner shall have a flat bottom and shall be no more than four (4) inches wider than the element on which it is heated.~~

~~(19) The cabinet shall maintain a record of all registered home-based processors and shall provide this information to the University of Kentucky Cooperative Extension Office and Local Health Departments.~~

~~Section 3.~~] Home-based Microprocessor Certification. (1) A Kentucky farmer[~~, as defined at KRS Chapter 217.015(59), and~~] desiring to grow, harvest, process, and market Kentucky grown microprocessed food products and participate in the training program shall submit a DFS-251, Application for Home-based Microprocessor, which is available from the Kentucky Food Safety Branch[~~make written request for certification on Form DFS-252, incorporated by reference in this administrative regulation and also available at the Web site, http://chs.ky.gov/publichealth/Food-Program.htm, at local health departments,~~] or at University of Kentucky Extension Service Office.

(2) The application for certification shall **be submitted to the cabinet and** include the following information and attachments:

(a) Name and address, including:

1. The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and

2. The name and address of the property owner if not owned by the farmer;

(b) The name and address of the primary residence occupied by the farmer;

(c) Type of water source. Sufficient potable water for the needs of the facility shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements established in 401 KAR Chapter 8[~~as stated in Section 2(2)(c) of this administrative regulation~~];

(d) Type of sewage disposal. Sewage, including liquid waste, shall be disposed of by a public sewage system, or if a public sewer system is not available, sewage disposal shall be made into a private sewage disposal system designed, constructed, and operated in accordance with the requirements of [~~the cabinet or the Natural Resources and Environ-mental Protection Cabinet,~~] 902 KAR Chapter 10 and 401 KAR Chapter 5;

(e) A listing of the food products to be processed and marketed by the farmer;

(f)[~~1.~~] Verification of attendance and successful completion of the Food Processing School including:

1. Verification of attendance and successful completion of the Food Processing School provided by the University of Kentucky Extension Office in compliance with KRS 217.015(58)(a) by the farmer for the manufacture of the microprocessed food products; or

2. Verification of attendance and successful completion of a food processing school approved pursuant to [~~21 C.F.R. 113.10 or~~] 21 C.F.R. 114.10[~~, and complete the filing process as defined in paragraph (g) of this subsection~~]; and

(g) Documentation from the processing authority for an established scheduled process for each food item that is to be processed by the home-based microprocessor.

1. Any change in the recipe shall constitute a recipe deviation, and a new review and approval shall be required from the processing authority prior to processing.

2. Each additional product shall have a separate written established scheduled process and shall be submitted to the processing authority for review prior to processing.

3. All established scheduled processes shall be maintained and made available upon request by the cabinet.

(3)**(a)** Prior to marketing home-based products, the application for home-based microprocessor, along with the required water source approval, shall be submitted to the cabinet[~~or the local health department~~].

(b) The cabinet shall notify the applicant if the application is approved or denied.

(c) If the application is approved, the home-based microprocessor may begin marketing home-based products.

(d) If the application is denied:

1. The cabinet shall notify the applicant in writing of the reasons for the denial; and

2. The home-based microprocessor may appeal in accordance with Section 9(5) of this administrative regulation.

(4)[~~Food products processed by a home-based microprocessor shall be nonpotentially hazardous. Crème filled pies, custard, custard pies, pies with meringue topping, cheese-cake, cream, custard and meringue pastries, raw seed sprouts and garlic-in-oil products shall not be prepared in a home and marketed for sale by a home-based microprocessor. Vacuum packaging of foods in containers other than mason-type jars shall be prohibited.~~

~~(5)~~] Product labels for home-based microprocessed foods shall be labeled in accordance with KRS 217.005 to 217.215**, and 21 U.S.C. 343(w)**. Draft copies of all home-based microprocessed food product labels shall be submitted for review by the cabinet prior to labeling and marketing.

(5) The certification requirements established in this subsection shall apply to a home-based microprocessor.

(a)[~~(6)~~] Each home-based microprocessor certification shall be issued only for the premises and person named in the application and shall be nontransferable.

(b) The certification[~~Certifications~~] shall be posted in a conspicuous place in the processing establishment and a copy shall be posted at the point of sale.

(c) Home-based microprocessed food products shall only be marketed by the certificate holder that processed the food product.

(6)[~~(7)~~] Each home-based microprocessor certification shall be valid for one (1) year, unless previously suspended or revoked. A home-based microprocessor certification[~~certifications~~] shall expire March 31 of each year and shall be renewable annually upon submittal of an application accompanied by an annual fee of fifty (50) dollars.

(7)[~~(8) Products made by home-based microprocessors shall not be used or offered for consumption in a retail-food establishment, by internet sales or in interstate commerce.~~

~~(9)~~] Attendance at[~~of~~] a food processing school as required by[~~defined in~~] subsection (2)(f) of this section shall be required every three (3) years or upon any change or addition of food products to be processed.[~~(10) Mop water shall not be disposed of in the dishwashing sink.~~

~~Section 4. Food Supplies. (1) The primary ingredients used in home-based microprocessed products shall have been grown by the microprocessor. All other ingredients in the products shall be in sound condition, safe for human consumption, shall be obtained from an approved commercially manufactured source, stored and protected separate and apart from personal use food ingredients.~~

~~(2) Ice used in the manufacture of food products shall have been commercially produced or made with potable water.~~]

Section 5. Production Standards for Home-based Microprocessors[~~Food Protection~~]. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food ingredients and processed products shall be protected from:

(a) Cross-contamination; and

(b) Potential contamination by:

1. Insects;
2. Insecticides;
3. Rodents;
4. Rodenticides;
5. Unclean equipment or utensils;
6. Unnecessary hand contact;

7. Draining;
8. Overhead leakage or condensation;
9. Dust;
10. Coughs;
11. Sneezes; or
12. Other agents of public health significance.

(2)[~~Prior to processing, the temperature of potentially hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary times of preparation.~~

~~(3) Only food-grade lime shall be used for soaking foods prior to pickling.~~

~~(4) Jar seals for microprocessed foods shall be inspected within twelve (12) to twenty-four (24) hours after cooling. Containers inspected and found to not be properly sealed shall be discarded. Reprocessing of unsealed jars shall be prohibited.~~

~~(5) For each microprocessed food item, the headspace above the food in a jar and below its lid shall be in compliance with the established scheduled process for that food.~~

~~(6) Hermetically-sealed packages shall be handled so as to maintain product and container integrity.~~

~~(7)~~] Pets and other animals shall not be allowed[~~permitted~~] in the kitchen and shall be kept out of food preparation areas during microprocessing related activities.

(3)[~~(8)~~] Children under age twelve (12) shall not be allowed[~~permitted~~] in the kitchen area during microprocessing related activities.

(4) Smoking or use of any form of tobacco shall not be allowed in the kitchen area during microprocessing related activities.

(5)[~~(9)~~] Laundry facilities may be present in the residential kitchen, but shall not be used during microprocessing related activities.

(6)[~~(10)~~] Home-based microprocessors shall restrict the use of the food preparation area during any processing activity. Cooking facilities, in the residential kitchen, shall not be available for personal use during home-based microprocessing activities.

(7)[~~(11)~~] Vehicles used in transporting home-based microprocessed food products shall be maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle compartments used to transport animals shall not be used for transporting home-based microprocessed foods.

(8) Products made by a home-based microprocessor shall not be used or offered for consumption in a retail food establishment or through interstate commerce.

(9) Food Supplies.

(a) The primary ingredients used in home-based microprocessed products shall have been grown by the microprocessor.

(b) All other ingredients in the products shall be in sound condition, safe for human consumption, obtained from **a state or federal permitted food manufacturer[~~an approved commercially manufactured source~~]**, and stored and protected separate and apart from personal use food ingredients.

(c) Prior to processing, the temperature of potentially **[-]**hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 135 degrees Fahrenheit or above, except during necessary times of preparation.

(d) Only food-grade lime shall be used for soaking foods prior to pickling.

(e) Jar seals for microprocessed foods shall be inspected within twelve (12) to twenty-four (24) hours after cooling. A container inspected and found to not be properly sealed shall be discarded. Reprocessing of an unsealed jar shall be prohibited.

(f) For each microprocessed food item, the headspace above the food in a jar and below its lid shall be in compliance with the established scheduled process for that food.

(g) Hermetically-sealed packages shall be handled so as to maintain product and container integrity.

(h) A product processed by a home-based microprocessor shall be packaged in food grade material.

(10)(a)[~~(2) Ice used in the manufacture of food products shall have been commercially produced or made with potable water.~~

~~Section 6. Food Preparation. (1)~~] Food shall be prepared:

1.[~~(a)~~] With a minimum of bare hand contact;

2.[~~(b)~~] On a food-contact surface; and

3.[~~(c)~~] With clean utensils that have been sanitized.

(b)[~~(2)~~] Raw fruits and raw vegetables that will be cooked, cut, or combined with other ingredients or that will be otherwise processed into food products by the home-based microprocessor shall first be thoroughly cleaned with potable water.

(11) Equipment and utensils. (a) Equipment.

1. Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners shall be prohibited for processing of low-acid canned foods.

2. Open-kettle canning and the processing of freshly-filled jars in a conventional oven, microwave oven, or dishwasher shall be prohibited.

3. All low-acid food shall be sterilized at temperatures of 240 to 250 degrees Fahrenheit, in pressure canners operated at ten (10) to fifteen (15) PSIG as measured by a dial gauge, or weighted gauge if deemed appropriate by the processing authority. The processing authority shall ensure that each weighted-gauge pressure canner utilized by a microprocessor is operated at the correct pressure for the corresponding altitude.

4. A pressure canner shall not have been manufactured prior to year 2000**,** and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges.

5. A pressure canner utilized in the microprocessing of foods shall, at minimum, be of a sixteen (16) quart capacity, which **shall[~~will~~]** contain **no more than** seven (7) quart jars. Use of pressure saucepans with less than sixteen (16) quart capacities shall be prohibited.

6. Each temperature dial gauge shall be annually verified for accuracy by the manufacturer of the canner or other qualified laboratory. Verification records shall be maintained by the home-based microprocessor and shall be made available to the cabinet upon request.

7. A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process.

8. Only regular and wide-mouth mason-type, threaded, home-canning jars with self-sealing, two (2) piece canning lids with screw bands shall be used for microprocessed foods. Mayonnaise-type jars, jars with wire bails and glass caps, and one (1) piece zinc porcelain-lined caps shall be prohibited.

(b) Equipment and utensils shall be:

1. Constructed and repaired with safe materials, including finishing materials;

2. Corrosion resistant and nonabsorbent;

3. Maintained in good repair; and

4. Smooth, easily cleanable, and durable under conditions of normal use.

(c) Single-service articles shall be made from clean, sanitary, and safe materials.

(d) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to food.

(e) Single-service and single-use articles shall not be reused.

(f) Safe plastic or rubber-like materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or distortion, and are of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods shall be permitted for repeated use

[~~Section 7. Food Display and Marketing. All food on display shall be protected from contamination~~].

Section 6. Sanitation Requirements for Home-based Microprocessors[~~8. Farmer or Processing Assistants~~]. (1) A farmer or processing assistant[~~assistants~~] shall not process food in a home-based microprocessing facility while there is a likelihood of contaminating food or a food-contact surface, or transmitting a disease to another person, if the individual is:

(a) Infected with a communicable disease that can be passed by food;

(b) A carrier of an organism that causes a communicable disease;

(c) Affected with a boil, infected wound, or acute respiratory infection; or

(d) Has a symptom caused by illness, infection, or other source that is associated with an acute gastrointestinal illness such as diarrhea, fever, vomiting, jaundice, or sore throat with fever.

(2)(a) Each person engaged in a food preparation and ware-washing operation of a home-based microprocessing facility shall wash his or her hands and exposed portions of arms thoroughly, with soap or detergent and warm water[~~in accordance with Section 1(8) of this administrative regulation~~]:

1.[~~(a)~~] Before starting work;

2.[~~(b)~~] After smoking;

3.[~~(c)~~] After eating;

4.[~~(d)~~] After handling nonwashed fruits and vegetables;

5.[~~(e)~~] After using the toilet; and

6.[~~(f)~~] As often as is necessary during work to keep hands and forearms clean.

(b) A hand-washing facility **with hot and cold potable water shall comply with[~~shall be installed pursuant to~~]** the requirements of 815 KAR 007:125, and shall be conveniently located.

(c)**[~~A hand-washing facility shall be provided with hot and cold potable water.~~**

[~~(d)~~] A supply of hand-cleaning soap or detergent shall be available at each hand-washing facility.

(d)[~~(e)~~] A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility.

(e)[~~(f)~~] An easily-cleanable waste receptacle shall be conveniently located near the hand-washing facility.

(f)[~~(g)~~] A soap dispenser and disposable towels for use in hand-washing shall be provided at the kitchen sink. This sink shall not be used for hand-washing after toilet use.

(g)[~~(h)~~] Hand-washing facilities, soap, detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

(3) Each worker of a home-based microprocessing facility shall keep his or her fingernails trimmed and clean.

(4) Each worker of a home-based microprocessing facility shall wear clean outer clothing.

(5) Each worker in the food preparation area of a home-based microprocessing facility shall wear a hairnet, hat, scarf, or similar hair covering that effectively restrains head and facial hair.

(6) Each worker of a home-based microprocessing facility shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods.

(7) Each worker of a home-based microprocessing facility shall consume food or use tobacco only in designated areas. A designated area shall not be located in a food preparation area or in an area where the worker's activity **could[~~may~~]** result in contamination of food, water, equipment, or utensils.

(8)[~~Section 9. Equipment and Utensils. (1) Equipment.~~

~~(a) Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners is prohibited for processing of low-acid canned foods;~~

~~(b) Open-kettle canning and the processing of freshly-filled jars in conventional ovens, microwave ovens, and dishwashers shall be prohibited;~~

~~(c) All low-acid food shall be sterilized at temperatures of 240 to 250 degrees Fahrenheit, in pressure canners operated at ten (10) to fifteen (15) PSIG as measured by a dial gauge, or weighted gauge if deemed appropriate by the processing authority. The processing authority shall ensure that weighted-gauge pressure canners utilized by microprocessors are operated at the correct pressure for the corresponding altitude;~~

~~(d) Pressure canners shall not have been manufactured later than five (5) years prior to the effective date of this administrative regulation and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges;~~

~~(e) Pressure canners utilized in the microprocessing of foods shall, at minimum, be of a sixteen (16) quart capacity, which will contain seven (7) quart jars. Use of pressure saucepans with less than sixteen (16) quart capacities shall be prohibited;~~

~~(f) Temperature dial gauges shall be annually verified for accuracy by the manufacturer of the canner or other qualified laboratory. Verification records shall be maintained by the home-based microprocessor and shall be made available to the cabinet upon request;~~

~~(g) A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process; and~~

~~(h) Only regular and wide-mouth mason-type, threaded, home-canning jars with self-sealing, two (2) piece canning lids with screw bands shall be used for microprocessed foods. Mayonnaise-type jars, jars with wire bails and glass caps, and one (1) piece zinc porcelain-lined caps shall be prohibited.~~

~~(2) Equipment and utensils shall be:~~

~~(a) Constructed and repaired with safe materials, including finishing materials;~~

~~(b) Corrosion resistant and nonabsorbent;~~

~~(c) Maintained in good repair; and~~

~~(d) Smooth, easily cleanable, and durable under conditions of normal use.~~

~~(3) Single-service articles shall be made from clean, sanitary, and safe materials.~~

~~(4) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to food.~~

~~(5) Single-service and single-use articles shall not be reused.~~

~~(6) Safe plastic or rubber-like materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or distortion, and are of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods shall be permitted for repeated use.~~

~~Section 10.~~] Cleaning and sanitizing of equipment and utensils.

(a)[~~(1)~~] Food utensils and equipment shall be stored in a manner to avoid contamination.

(b)[~~(2)~~] Food-contact surfaces and sinks shall be smooth and easily cleanable.

(c)[~~(3)~~] Food-contact equipment, surfaces, and utensils shall be cleaned and sanitized prior to microprocessing related activities and after each use.

(d)[~~(4)~~] Sinks, basins**,** or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(e)[~~(5)~~] Equipment and utensils shall be prerinsed or prescraped and, if necessary, presoaked to remove food particles and soil.

(f)[~~(6)~~] Manual cleaning and sanitizing shall be conducted as **established in subparagraphs 1. through 5. of this paragraph.[~~follows:~~]**

1.[~~(a)~~] For manual cleaning and sanitizing of cooking equipment, and utensils, three (3) compartments shall be provided and used. A two (2) compartment sink, with an additional portable tub may be used**.[~~;~~]**

2.[~~(b)~~] Each of the following five (5) steps of the ware-washing process shall be completed:

a.[~~1.~~] Prerinsing or scraping;

b.[~~2.~~] Washing with hot detergent solution;

c.[~~3.~~] Rinsing to remove abrasives and cleaning chemicals;

d.[~~4.~~] Sanitizing, using a method approved by the applicable provisions of[~~KRS Chapter 217, Kentucky Food, Drug, and Cosmetic Act, and~~] 902 KAR 45:005, Section 2[~~17~~], the Kentucky[~~State Retail~~] Food Code; and

e.[~~5.~~] Air-drying and draining.

3.[~~(c)~~] Washing, rinsing**,** and sanitizing solutions shall be maintained in a clean condition**.[~~;~~]**

4.[~~(d)~~] The washing solution shall be maintained at a minimum temperature of **at least** ninety-five (95) degrees Fahrenheit**.[~~; and~~]**

5.[~~(e)~~] Chemical sanitizer shall not have a concentration higher than the maximum permitted by law. A test kit or other device shall be provided to measure the parts per million concentration of the solution.

(g)[~~(7)~~] Mechanical cleaning and sanitizing shall be conducted as established in this subsection.[~~follows:~~] A domestic or home-

style dishwasher may be used if the[following] performance criteria established in this subsection are met.

1.[: (a)] The dishwasher shall effectively remove physical solids from all surfaces of dishes.

2.[(b)] The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

3.[(c)] The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least 150 degrees Fahrenheit after the final rinse and drying cycle.[; and]

4.[(d)] The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level possible **while[when]** sanitizing the kitchen facility's[facilities'] utensils and tableware. A copy of the manufacturer's instructions shall be available on the premises.

(h)[(8)] There shall be sufficient area or facilities, such as portable dish tubs and drain boards, for the proper handling of:

1.[(a)] Soiled utensils prior to washing; and

2.[(b)] Cleaned utensils after sanitizing.

(i)[(9)] Manually-cleaned equipment, utensils, and tableware shall be air-dried.

(9)[Section 11.] Toilet Facilities.

(a)[(1)] Toilet facilities shall be:

1. Installed pursuant to requirements of[the State Plumbing Code, KRS Chapter 318 and] 815 KAR 007:125;[Chapter 20, shall be]

2. Conveniently located;[,] and[shall be]

3. Accessible to workers at all times.

(b)[(2) A bathroom opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by a window or by mechanical means. A soap dispenser and disposable towels shall be provided for hand washing in a bathroom used by a food handler.

(3)] A toilet facility, including toilet fixtures and a related vestibule, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

(10)[Section 12. Hand-washing Facilities for Processors and Processing Assistants. (1) Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR 020:191, and shall be conveniently located.

(2) A hand-washing facility shall be provided with hot and cold potable water.

(3) A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common or cloth towels shall be prohibited. Easily-cleanable waste receptacles shall be conveniently located near the hand-washing facility.

(4) A soap dispenser and disposable towels for use in hand washing shall be provided at the kitchen sink. This sink shall not be used for hand washing after toilet use. After visiting the toilet, hands shall first be washed in an approved hand-washing facility before they are washed in the kitchen sink.

(5) Hand-washing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

Section 13. Floors, Walls, Ceilings, and Lighting.] The floors, walls, ceilings, and attached equipment in food preparation and storage areas and in workers bathrooms of a home-based microprocessor facility shall be fabricated from easily cleanable material, [shall be] maintained in good repair, and kept clean.

(11) Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

(12) The use and storage of[Section 14. Insect and Rodent Control. (1) Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents, flies, cockroaches, or of pests. The premises shall be maintained in a condition that is pest free and that prevents the harborage or feeding of insects or rodents.

(2)] pesticides and rodenticides.

(a) A person shall not apply insecticides or rodenticides except:

1. In accordance with requirements of KRS 217B.500 to 217B.990 and 302 KAR Chapter 29;

2. In accordance with the manufacturer's labeling; and

3. In such a way that food, food-contact surfaces, and the supply of potable water **shall not be[are not]** contaminated.

(b) Open pesticide or rodenticide bait boxes shall not be used.[;]

(c) Pesticides, rodenticides, and other toxic materials shall be stored apart from food, equipment, and utensils. Every container of toxic material shall be clearly labeled for easy identification.[; and]

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(13)[(3)] Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors and the attraction of pests. If garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to 401[applicable administrative regulations of the Cabinet for Natural Resources and Environmental Protection, 901] KAR Chapter 63.

Section 7[15]. Microprocessors Utilizing Permitted Kitchens. (1) A microprocessor[Microprocessors] may elect to process[their] food products utilizing a kitchen that currently holds a valid permit to operate issued by the cabinet.

(2) A microprocessor[Microprocessors] utilizing a permitted kitchen shall comply with Sections 2, 4, 5, and 6[3 through 14] of this administrative regulation.[;]

(a) A microprocessor[Microprocessors] utilizing a permitted kitchen shall provide a copy of a signed, written agreement between the facility owner and the farmer that authorizes the use of the permitted kitchen for microprocessing and the name, address, and permit number of the facility.[;]

(b) Microprocessed food products shall not be made during periods of time **while[when]** the permitted facility is in operation.[;]

(c) Microprocessed food products shall be stored at the farmer's[farmers] primary residence and shall be maintained separate and apart from the personal use food supplies.[; and]

(d) Microprocessed food products made in a permitted kitchen shall only be sold at farmers markets, certified roadside stands, or from the microprocessor's farm.

Section 8[16]**[. Plan Review of Future Construction. If a kitchen or worker bathroom facility of a home-based microprocessor is constructed or extensively remodeled, properly prepared plans and specifications for the construction, remodeling, or alteration, showing layout, construction materials, location, size, and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the local health department for approval before the work is begun.**

Section 9][17]. Inspections, Notices, Records. (1) Inspections. At least once every four (4)[two (2)] years, the cabinet shall inspect each home-based microprocessor and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. The cabinet representative inspecting a home-based microprocessor shall record the findings on Form DFS 252, Home-based Processor/Microprocessor Inspection Report, and shall **provide[furnish]** a copy of the inspection report to the certificate holder or his representative in charge.

(3) Issuances of notices. If an inspection reveals a violation of this administrative regulation, the cabinet shall notify the certificate holder or **the certificate holder's[his]** representative in charge. In the notification, the cabinet shall **establish**:

(a)**[Establish]** The specific violations found; and

(b)**[Establish]** A specific and reasonable period of time for the correction of the violations found pursuant to this paragraph[the following provisions]. The report of inspection shall state:

1. Failure to comply with a notice from the cabinet or local health department, or with a time limit for correction of a violation,

shall result in regulatory action up to and including suspension of the certificate, as provided in KRS 217.126;

2. An opportunity for appeal from an adverse notice or inspection finding shall be provided if a written request is filed with the cabinet within ten (10) days following service of notice, in accordance with 902 KAR 1:400; and

3. Failure to comply with a notice issued in accordance with the provisions of this administrative regulation may result in suspension of the certificate.

(4) Service of notice. A notice provided for under this section shall be properly served if a copy of the DFS-252 inspection report form or other notice has been delivered personally to the certificate holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the certificate holder. A copy of the notice shall be filed with the cabinet.

(5) The cabinet shall maintain a record of all certified home-based microprocessors and shall provide this information to the University of Kentucky Cooperative Extension Service Office and local health departments.

Section **9[~~10~~]**[~~18~~]. Certificate Suspension, Revocation, or Denial. (1) A home-based microprocessor certificate shall be suspended immediately, upon notice to the certificate holder, if:

(a) The cabinet has reason to believe that an imminent public health hazard exists; or

(b) The certificate holder has interfered with the cabinet in the performance of its duties.[~~;~~]

(2) Except as provided in subsection (1) of this section[~~In all other instances~~], the cabinet shall allow a certificate holder a reasonable opportunity to correct a violation. The cabinet shall notify, in writing, a certificate holder or operator who fails to comply with a written notice issued under the provisions of this administrative regulation[~~,~~] that the certificate shall be suspended at the end of ten (10) days following service of the notice, unless a written request [~~for~~] is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended certificate. A person whose certificate has been suspended may make application for a reinspection in accordance with 902 KAR 1:400[~~for the purpose of reinstatement of the certificate. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that, in his opinion, the conditions causing suspension of the certificate have been corrected, the cabinet shall make a reinspection. If the applicant is in compliance with the requirements of this administrative regulation, the certificate shall be reinstated~~].

(4) Revocation of certificate. For serious or repeated violations of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, a certificate may be permanently revoked. Before a permanent revocation action is taken, the cabinet shall notify the certificate holder in writing, stating the reasons**[~~for which~~]** the certificate is subject to revocation and advising that the certificate shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an appeal is filed in accordance with 902 KAR 1:400. A certificate may be suspended for cause pending revocation.

(5) Denial. Any applicant denied the issuance of a certificate by the cabinet within ten (10) days of service of the notice may appeal the certificate denial in accordance with 902 KAR 1:400.

Section **10[~~11~~]**[~~19~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a)[~~"DFS-250, Application for Home-based Processors" (6/03);~~

~~(b)~~] "DFS-251, Application for Home-based Microprocessor", 05/18[~~(6/03)~~]; and

(b)[~~(c)~~] "DFS-252, Home-based Processor/Microprocessor Inspection Report", 05/18[~~(6/03);~~

~~(d) "DFS-234, Certificate or Registration to Operate" (4/97);~~

~~(e) "DFS-214, Enforcement Notice (8/96)";~~

~~(f) "DFS-212, Request for Conference (10/96)";~~

~~(g) "DFS-213, Notice for Conference (8/96)"; and~~

~~(h) "DFS-215, Application for Reinstatement of Home-based Microprocessor Certification (2/95)"~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEFFREY D. HOWARD, JR., M.D., Acting Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, 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 CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, Phone (502) 564-3970, Email: julied.brooks@ky.gov.; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for all home-based processed foods and distinguishes between a home-based processor and a home-based microprocessor.

(b) The necessity of this administrative regulation: KRS 217.125 authorizes the secretary of the cabinet to promulgate administrative regulations consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act. KRS 217.137 authorizes the secretary to promulgate administrative regulations for the specific circumstances of home-based microprocessors. KRS 217.136 specifically excludes home-based processors from KRS 217.125 when in full compliance with the provisions of the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation ensures home-based processors are in compliance with KRS 217.136. In addition, this administrative regulation establishes the provisions for home-based microprocessors as required by KRS 217.137 and ensures all applicants for home-based microprocessors have completed the courses required by KRS 217.138.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets standards that preserve public health while allowing for economic opportunity for home-based processors and microprocessors to produce and process food in their home kitchens.

(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 amended after comments version of this administrative regulation updates federal citations, cites to the federal requirements for labeling foods that contain a known food allergen, clarifies the certification process for a home-based microprocessor, clarifies that ingredients not grown by the home-based microprocessor are to be from a state or federal permitted food manufacturer, makes needed punctuation and language change per 13A drafting rules, and removes the burden of requiring a home-based microprocessor to submit detailed plans when constructing or extensively modifying a kitchen or worker bathroom.

(b) The necessity of the amendment to this administrative regulation: The amended after comment version is necessary to comply with KRS 13A drafting rules, and to provide clarification for microprocessor certification, and allergen labeling requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.137 authorizes the secretary to promulgate administrative regulations for home-based microprocessors. KRS 217.138 establishes the certification process for home-based microprocessors. KRS 217.136 exempts a home-based processor from permit requirements and expands the locations where home-based processed foods can be sold.

(d) How the amendment will assist in the effective administration of the statutes: The amended after comments version of this administrative regulation will ensure a consistent

process for home-based microprocessor certification, will no longer require a home-based microprocessor to wait for cabinet approval of construction plans, and will no longer require program staff to review and approve construction plans for home-based microprocessors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 776 Home-based Processors and 140 Microprocessors currently operating under the Farmers Market administrative regulation. This program is administered by the Food Safety Branch within the Department for Public Health.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The amended after comment version of this administrative regulation removes the requirement that a home-based microprocessor submit detailed plans when constructing or extensively modifying a kitchen or worker bathroom. This will ease their burden and reduce the costs associated with construction and home modification. Both home-based processors and home-based microprocessors will need to be familiar with the labeling requirements when a food contains a known food allergen.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no additional costs associated with the amended after comment version of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Home-based processors will have greater opportunities for marketing and selling their home-based food products. Home-based microprocessors will no longer incur a cost associated with the submission of detailed construction plans.

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

(a) Initially: There is no anticipated increase in cost as a result of this amendment.

(b) On a continuing basis: There is no anticipated increase in cost as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds generated by the Home-based Microprocessor certification program.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established for Home-based Processors. The Home-based Microprocessors currently have a set certification fee of $50.

(9) TIERING: Is tiering applied? Yes, tiering has been applied as there are separate requirements for home-based processors and microprocessors. All home-based processors will be required to comply with KRS 217.136 and the applicable provisions of this administrative regulation. The provisions of this administrative regulation will apply equally to all home-based microprocessors.

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 program is administered by the Food Safety Branch within the Department for Public Health, with inspection of the home-based microprocessors conducted by state Food Manufacturing Section Inspectors. Local health departments may refer any complaints received to the Food Safety Branch. The only other entity that may be impacted will be the Division of Water to approve the water source for microprocessors without a municipal water supply.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217.

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? Home-based processors do not have a fee. Home-based Microprocessors have a $50 certification fee.

(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 140 Home-based Microprocessors will generate certification fees in the amount of $7,000. (This amount is unchanged from current fees collected from home-based microprocessors.)

(c) How much will it cost to administer this program for the first year? No change

(d) How much will it cost to administer this program for subsequent years? No change.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 113.83, 114.10, 114.83 and 21 U.S.C. 343(w)

2. State compliance standards. KRS 217.138 establishes the home-based microprocessor certification program. KRS 217.135 authorizes the secretary to establish a standard of identity of any food or class of food promulgated under authority of the federal act.

3. Minimum or uniform standards contained in the federal mandate. Individuals seeking certification as a microprocessor are required to complete the training program pursuant to 21 C.F.R. 113.83, 114.10 and 114.83 offered by the University of Kentucky Cooperative Extension Service as the processing authority. The Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 343(w)) requires foods be labeled with the common or usual name of a major food allergen

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:010. Independent <u>non-relative</u> adoptions.

RELATES TO: KRS 199.011, 199.470-[~~199.472,~~] 199.473, **<u>199.474(1)(b),</u>** 199.480, 199.490(3), 199.492, 199.493, 199.500, 199.510, 199.520, 199.540, 199.570, 199.572, 199.590, 199.990, 615.030, Chapter 625[~~,~~]

STATUTORY AUTHORITY: KRS <u>194A.050(1)</u>[~~194.A050(1)~~], 199.472, 199.473(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce administrative regulations necessary to implement

programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.472 requires the cabinet to promulgate administrative regulations that establish criteria to be followed for adoption of children. KRS 199.473(3) requires a home study to be made in accordance with administrative regulations promulgated by cabinet. This administrative regulation establishes the procedure for[~~in~~] an independent non-relative adoption.

Section 1. Definitions. (1) "Adoption worker" is defined by KRS 199.011(1)[~~(8)~~].

(2)[**~~"Assessment" means completion of the DPP-199, Independent Non-Relative Adoption Assessment.~~**

~~(3)~~][~~(2)~~] "Child" is defined by KRS 199.011(4).

~~(3)[(4)]~~[~~(3)~~] "Child-placing agency" is defined by KRS 199.011(6)[~~(7)~~].[~~(4) "Foster family home" is defined by KRS 199.011(9).~~]

~~(4)[(5)]~~ "[~~Interstate~~]Compact administrator" means the individual appointed pursuant to the terms of the Interstate Compact on the Placement of Children (ICPC) who is responsible for the administration and management of the ICPC within the Commonwealth of Kentucky[~~is defined by KRS 615.030, Article VII~~].

(5) "Home study" is defined by KRS 199.474(1)(b).

(6) "Independent non-relative adoption" means an adoption that is not exempted from secretary approval by KRS 199.470(4)[~~"Placement services" is defined by KRS 199.011(13)~~].

(7) "Prospective Adoptive Parent" is defined by 922 KAR 1:100(1)[~~"Voluntary and informed consent" is defined by KRS 199.011(14)~~].

Section 2. Eligibility. (1) An attorney, child-placing agency, or prospective adoptive parent shall determine if a prospective adoptive parent qualifies for the cabinet to complete the **home study[~~assessment~~]**, in accordance with KRS 199.473(3).

(2) If the prospective adoptive family is over the income limit to qualify for the cabinet to complete the family's **home study[~~assessment~~]** in accordance with KRS 199.473(3) **and Section 6 of this administrative regulation, a home study[~~, an assessment~~]** shall be:

(a) Completed by a child-placing agency; and

(b) Forwarded to the cabinet along with documentation required in accordance with Section 3 of this administrative regulation.

(3) The cabinet shall:

(a)[~~(1)~~] Process an application for an independent non-relative adoption in accordance with Section 3 of this administrative regulation; and

(b) Cause **a home study[~~an assessment~~]**to be completed in accordance with Section 6 of this administrative regulation[~~(2) Assure a home study is conducted according to federal poverty level guidelines in accordance with KRS 199.473(3)~~].

Section 3. Application for Permission to Proceed with an Independent Non-Relative Adoption[~~Place or Receive a Child~~]. (1) To apply for permission to proceed with the filing of a petition[~~place or receive a child~~] for an independent non-relative adoption, an applicant shall complete and file the["]DPP-187, Independent Non-Relative Adoption Application,["] in accordance with subsections (2) through (8) of this section.

(2) The DPP-187 shall be:

(a) Signed by:

1. Each prospective[~~The proposed~~] adoptive parent[~~or parents~~] wishing to receive a child;

2. Each[~~The~~] parent[~~or parents~~] wishing to place a child; or

3. Both parties involved;

(b) Filed[~~in duplicate and~~] in writing with the secretary, in care of the[~~Commissioner of the~~] Department for Community Based Services, attention: Adoption Services Branch, 275 E. Main Street, 3C-E, Frankfort, Kentucky 40621;

(c)[~~Filed by means of certified or registered mail;~~

~~(d)~~] Accompanied by the forms and information listed in subsection (3) of this section; and

(d)[~~(e)~~] Accompanied by a nonrefundable fee of $200, required by KRS 199.473(13), which shall be:

1. Sent per submission and not per child;

2. In the form of a certified or cashier's check; and

3.[~~2.~~]Payable to the Kentucky State Treasurer.

(3) The following forms and documents shall be filed with the completed DPP-187:

(a) The ["]DPP-105, Medical Information on Child's Birth["],**[~~or~~]** a copy of the child's hospital newborn medical record**, or[~~,~~**

~~(b)~~] The DPP-108A, Health Information Required for Prospective Adoptive Parent(s) regarding Dependent Children;

(b)[~~(c)~~] A copy of the custody order showing that[~~(b) If~~] the child's custody has been awarded to the prospective[~~proposed~~] adoptive parent[~~:~~

~~1. A copy of the custody order; and~~

~~2. Copies of background checks conducted in accordance with KRS 199.473(8)~~];

(c)[~~(d)~~][~~(c)~~] The ["]DPP-190, Information to be Obtained from Prospective[~~Proposed~~] Adoptive Parent(s)["];[~~(d) The "DPP-190A, Supplemental Information to be Obtained from the Proposed Adoptive Parent(s)";~~]

(d)[~~(e)~~] Verification of current marriage, prior divorce, or death of a prior spouse of the prospective[~~proposed~~] adoptive parent;

(e)[~~(f)~~] Most recent tax return or written verification of income from the income source for each prospective[~~the proposed~~] adoptive parent;

(f)[~~(g)~~] The ["]DPP-108A, Health Information Required for Prospective[~~Proposed~~] Adoptive Parent(s) Regarding Dependent Children["] for each child residing in a prospective adoptive parent's home; and

(g)[~~(h)~~] Documentation[~~The "DPP-107 Health Information Required for Resource Home or Adult Household Members", incorporated by reference~~] in accordance with 922 KAR 1:350, Section 2(8), completed by each prospective[~~the proposed~~] adoptive parent and all adult household members.

(4)[~~The DPP-187 may be obtained at:~~

~~(a) Local Department for Community Based Services offices;~~[~~or~~]

~~(b) The central office in Frankfort, Kentucky.~~

~~(5)~~] The DPP-187 shall be considered officially filed:

(a) When received by the Adoption Services Branch[~~in the office of the Commissioner~~] of the Department for Community Based Services; and

(b) If it meets the requirements of this section.

(5)[~~(6) The DPP-187 shall not be processed if, prior to the receipt of the application, the child was committed to the cabinet by order of the district or circuit court.~~

~~(7)~~] The cabinet shall return to sender an application that does not meet the requirements of this section[~~:(a) An incomplete application; or~~

~~(b) An application for an unborn child submitted more than thirty (30) days in advance of the child's expected due date~~.

~~(8) The returned receipt of certified or registered mail shall be proof of the filing of the application~~].

Section 4. Limitations to Filing. (1) In the case of twins who are available and suitable for adoption, the DPP-187 shall not be accepted unless the prospective[~~proposed~~] adoptive parent applies to receive both children.

(2) If the DPP-187 for a child has been filed, subsequent applications for the same child shall not be accepted unless the previous DPP-187 has been withdrawn by a written request to the cabinet by one (1) of the parties involved.

(3) If one or both of the placing parents reside outside of Kentucky, the DPP-187 shall not be accepted unless an interstate compact adoption packet is received from the state placing the child in Kentucky.

(4) The DPP-187 shall not be processed if, prior to the receipt of the application, the child was **in the temporary custody of or** committed to the cabinet by order of the district or circuit court.

Section 5.[~~Interstate Adoptions. (1) An interstate adoption shall~~

~~be in accordance with KRS 199.473(12).~~

~~(2) A prospective adoptive parent who resides in a state other than Kentucky shall:~~

~~(a) Meet application requirements of Section 3 of this administrative regulation; and~~

~~(b) Submit the DPP-187, but may substitute other forms required in Section 3 of this administrative regulation with comparable forms from the prospective adoptive parent's state of residence.~~

~~Section 6.~~] Preadoptive Placement. (1)(a) The child shall not be in the physical care, control, or custody of a prospective[~~the proposed~~] adoptive parent, unless a circuit court grants temporary custody in accordance with KRS 199.473(7) and (8).

(b) If the child is found in the physical care of a prospective[~~the proposed~~] adoptive parent without a circuit court order of temporary custody, the cabinet shall take action in accordance with KRS 199.473(11) until the written approval of the secretary or designee is received by a prospective[~~the proposed~~] adoptive parent.

(2)(a) If either the child's custodial parent or a prospective[~~the proposed~~] adoptive parent reside out-of-state, the written approval of the[~~interstate~~] compact administrator shall be given before the child's preadoptive placement with a prospective[~~the proposed~~] adoptive parent can occur.

(b) If the child's custodial parent resides out-of-state and the child is found in Kentucky without the approval of the[~~interstate~~] compact administrator, the child shall be removed from Kentucky and a neutral setting arrangement made within the state of the custodial parent's residence.

(3) If the disposition of the DPP-187 is pending, the cabinet may cooperate with the custodial parent of the child in finding suitable temporary placement for the child.

(4)(a) During the time between filing the DPP-187 and the decision of the cabinet granting or denying the application, the responsibility for providing for the care of the child shall not rest with the cabinet unless a court has placed the child with the cabinet, with the agreement of the cabinet, after the filing of the DPP-187.

(b) The responsibility shall remain with the custodial parent of the child during this time.

Section 6[~~7~~]. **Home Study[~~Assessment~~]**[~~Home Study~~] Requirements. (1) If[~~When~~] the DPP-187 has been filed with the[~~Commissioner of the~~] Department for Community-Based Services, the department shall cause **a home study[~~an assessment~~]** [~~a home study~~] of the prospective[~~proposed~~] adoptive home to be completed, in accordance with the provisions of KRS 199.473(2), (3), and (4) for applicants who meet the requirements of Section 2(1) of this administrative regulation.

(2)[~~The home study for an out-of-state proposed adoptive home shall be accepted if conducted by the:~~

~~(a) Out-of-state public agency; or~~

~~(b) Licensed child-placing agency in the respective receiving state if the public agency is unable or unwilling to provide the service~~.

~~(3)~~]

(a) Prior to filing a DPP-187, a prospective[~~the proposed~~] adoptive parent may contract with a licensed child-placing agency to complete a home study and background checks of each prospective[~~the proposed~~] adoptive parent and household.

(b)The **home study[~~assessment~~]**[~~home study~~] of a prospective[~~proposed~~] adoptive parent shall include:

1. A minimum of three (3) personal references, including one (1) from a relative of a prospective[~~the proposed~~] adoptive parent;

2. A minimum of two (2) financial references;

3. Criminal background check conducted in accordance with[~~:~~

~~a.~~] KRS 199.473(2);[~~ or~~

~~b. The policy and laws of the receiving state's child welfare agency, if the proposed adoptive parent resides in a state other than Kentucky; and~~]

4. A Child abuse and neglect check conducted[~~:~~

~~a.~~]in accordance with 922 KAR 1:490;[~~or~~

~~b. Conducted by the receiving state's child welfare agency, if one is available and the proposed adoptive parent resides in a state other than Kentucky;~~]

5. Documentation by the adoption worker of:

a. A minimum of one (1) home visit and face-to-face interview with each prospective[~~proposed~~] adoptive parent and members of the parent's household; and

b. Contact with the prospective[~~proposed~~] adoptive parent's adult child on the ["]DPP-197, Adult Child Interview["], if the cabinet is able to locate the adult child; and

6.a. Sections I, II, III & V of the ["]DPP-199, Independent Non-Relative Adoption **Home Study[~~Assessment~~]**[~~Home Study Outline"~~], completed by the adoption worker in regard to the prospective[~~proposed~~] adoptive parent's home and family background;[~~and~~]

b. Section IV of the DPP-199 if the same agency is completing the birth parent interviews; and

c. A determination by the adoption worker of the prospective[~~proposed~~] adoptive parent's suitability to proceed with an independent adoption.

(3)[~~(4)~~] If an adoption worker for a licensed child-placing agency determines, at the completion of background checks in accordance with KRS 199.473(8), that a prospective[~~the proposed~~] adoptive parent does not appear suitable to proceed with an independent non-relative adoption, the worker shall provide written notification to the Department for Community-Based Services, Adoption Services Branch[~~Section~~], 275 East Main Street, 3C-E, Frankfort, Kentucky 40621.

(4)[~~(5)~~] The adoption worker shall discuss the child's background and potential[~~proposed~~] placement with each prospective[~~the proposed~~] adoptive parent and make a determination of each prospective[~~the proposed~~] adoptive parent's ability to meet the needs of the specific child and provide the child with a suitable home.

(5)[~~(6)~~] The adoption worker shall complete the DPP-199 for review and:

(a) Processing with the Interstate Compact, if applicable; and

(b) Consideration in the secretary's or designee's[~~Commissioner's~~] decision about the application for an independent adoption.

Section 7[~~8~~]. Interviewing the Biological Parents. (1) Any party to the court case may request a search of the putative father registry in accordance with KRS 199.505 and 922 KAR 1:560.

(2) If the biological or placing parents, legal father, or putative father reside in Kentucky, the adoption worker shall make a diligent effort to interview the custodial biological or each placing parent of the child to be placed and the non-custodial biological parent, legal father, or putative father to:

(a) Determine whether[~~or not~~] the biological parents are aware and accepting of the ethnic and religious background of each prospective adoptive parent[~~the receiving parents~~];

(b) Determine whether[~~or not~~] they agree to the placement of the child with each prospective adoptive parent[~~the proposed receiving parents~~];

(c) Obtain health history and sociological information on the child's family with a ["]DPP-191, Information to be Obtained From the Placing Parent["];

(d) Document the placing parent's knowledge of the independent adoption with the ["]DPP-191A, Information to Be Obtained from the Placing Parent for Independent Adoptions["];and

(e) Determine the biological parents' feelings about possible future contact with the adopted person on a ["]DPP-192, Biological Parent Consent Form["], in accordance with KRS 199.572.

(3)[~~(2)~~] If a[~~the~~] child's placing parent refuses to be interviewed by the cabinet representative or the appropriate Kentucky or out-of-state adoption worker, the cabinet may deny the application.

(4)[~~(3)~~](a) If a child's placing parent lives[~~parents live~~] out-of-state, efforts shall be made to have the biological or placing parents, and legal~~,~~ or putative father, if different than the biological father, interviewed for the purposes specified in subsection (2)[~~(1)~~] of this section.

(b) The interviews with out-of-state biological or placing

parents or[,] legal[,] or putative father shall be accepted if conducted by a[:

~~1. An out-of-state public agency; or~~

~~2. A~~] licensed private adoption agency in the respective state[, ~~if the public agency is unable or unwilling to provide the service~~].

(5)[~~(4)~~] If after diligent efforts of the out-of-state public or private agency, the biological or placing parents, legal[,] or putative father, or legal custodian of the child cannot be interviewed, or if the information and material cannot be obtained, the secretary or designee may approve the placement provided the other conditions of KRS 615.030, the Interstate Compact on the Placement of Children, have been met.

Section 8[~~9~~]. Final Decision Regarding Prospective Adoptive Home. (1) Upon completion of the **home study[~~assessment~~]** [~~home study of the proposed adoptive home~~], each prospective[~~proposed~~] adoptive parent shall be notified by[~~registered or~~] certified mail of the decision of the secretary or designee, either granting or denying permission for the placement or receiving of the child.

(2) The petition for adoption may be filed in accordance with Section 9[~~child shall be placed in the home of the proposed adoptive parent immediately,~~] if[:

~~(a)~~] the cabinet grants permission for the child's placement[~~; and~~

~~(b) The child is available for placement~~].

(3) If the permission is denied, a prospective[~~the proposed~~] adoptive parent[~~or parents~~] or a[~~the~~] placing parent[~~or parents~~] may appeal the decision. If appealing, a prospective[~~the proposed~~] adoptive[~~parent or parents~~] or a placing parent[~~or parents~~] shall, within ten (10) days after notice of denial, appeal the decision to the circuit court of the county in which the adoption is proposed in accordance with KRS 199.473(9).

Section 9[~~10~~]. Filing of the Petition to Adopt. (1) If a child has been placed in a prospective[~~proposed~~] adoptive home with the permission of the secretary or designee, a prospective[~~the proposed~~] adoptive parent[~~or parents~~] may file the petition for adoption in the circuit court in the county of their residence with the secretary's or designee's written approval in accordance with KRS 199.470(3) and 199.473.

(2) Subsequent to the filing of a petition in Kentucky to finalize an independent non-relative adoption made with the written approval of the secretary, the agency that[~~which~~] completed the **home study[~~assessment~~].**[~~independent adoption placement home study~~] shall prepare the confidential report to the court in accordance with KRS 199.510(2) and KRS 199.590(6).

Section 10[~~11. Service Appeals. A person aggrieved by a cabinet action with regard to an independent adoption may request an administrative hearing in accordance with 922 KAR 1:320.~~

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

(a) "DPP-105, Medical Information on Child's Birth", [~~edition~~] 11/05["];

(b) "DPP-108A, Health Information Required for Prospective[~~Proposed~~] Adoptive Parent(s) Regarding Dependent Children", 1/19[~~edition 11/05"~~];

(c) "DPP-187, Independent Non-Relative Adoption Application", 1/19[~~edition 3/15"~~];

(d) "DPP-190, Information to be Obtained from Prospective[~~Proposed~~] Adoptive Parent(s)", 1/19[~~edition 11/05"~~];

(e)[~~"DPP-190A, Supplemental Information to be Obtained from the Proposed Adoptive Parent(s), edition 11/05";~~

~~(f)~~] "DPP-191, Information to be Obtained from the Placing Parent", [~~edition~~]11/05["];

(f)[~~(g)~~] "DPP-191A, Information to be Obtained from the Placing Parent for Independent Adoptions", [~~edition~~]11/05["];

(g)[~~(h)~~] "DPP-192, Biological Parent Consent Form", [~~edition~~]11/05["];

(h)[~~(i)~~] "DPP-197, Adult Child Interview", [~~edition~~]11/05["]; and

(i)[~~(j)~~] "DPP-199, Independent Non-Relative Adoption **Home Study[~~Assessment~~]"** [~~Home Study Outline~~], **2[~~1~~]**/19[~~edition 11/05"~~].

(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.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administration regulation establishes the procedure for the completion of independent non-relative adoptions in accordance with KRS 199.470 and KRS 199.473.

(b) The necessity of this administrative regulation: This administration regulation is necessary to establish procedures for an independent non-relative adoption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by establishing procedures for independent non-relative adoptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes through its establishment of procedures for an independent non-relative adoption.

(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 the administrative regulation updates content for congruency with House Bill 1 from the 2018 Regular Session and emphasis on permanency in child welfare transformation efforts underway within the Commonwealth of Kentucky. The amendments to this administrative regulation will ensure a less cumbersome and time-consuming path to adoption for prospective adoptive parents who require approval from the secretary or designee in order to proceed with an adoption. In addition, the amendment makes updates and technical corrections in accordance with KRS Chapter 13A. The administrative regulation was amended in response to comments received to replace "assessment" with "home study" consistent with House Bill 1, codified as KRS 199.474 and to make further clarifications.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure a timelier path to non-relative adoption, thereby improving the experience of adopting for prospective adoptive parents by removing burdensome documentation previously required for these types of adoptions. The amendment is necessary to improve timely permanency for children involved in these adoptions and congruency with statutes. The administrative regulation was amended in response to comments to provide further clarification.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting more timely adoptions, and better facilitating permanency.

(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 a more streamlined process for independent non-relative adoptions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In the past five years, there have been

approximately 197 Independent non-relative adoptions completed annually. This administrative regulation will affect prospective adoptive families who wish to independently adopt non-relative children and licensed private child-placing 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:
Effective with this administrative regulation, adoption agencies, prospective adoptive parents, and cabinet staff will have fewer forms, updated forms, and less cumbersome forms and processes to obtain approval through the secretary or designee. This amendment removes time-consuming processes that are unnecessary for obtaining approval. It also provides an updated home study tool that focuses on the safety and well-being of the placement.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the policies that are more timely and proficient in completing independent non-relative adoptions.

(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 costs to the administrating agency.

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation reinforces a fee prescribed by KRS 199.473(13).

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.470, 199.472, 199.473

(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 independent non-relative adoption process has been in place for a number of years. It has generated a revenue of approximately $39,400.00 per year over the last five years. The amendment to this administrative regulation does not alter the $200 fee for the filing of an independent non-relative adoption. Despite this, House Bill 1 from the 2018 Regular Session has broadened the category of entities who are excluded from this process to include cousins, fictive kin, and others. As a result of House Bill 1, the number of filings and fees generated are expected to decrease dramatically.

(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 continue to generate a small amount of new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The implementation of this administrative regulation is projected to fall within available state appropriations.

(d) How much will it cost to administer this program for subsequent years? The implementation of this administrative regulation amendment is projected to fall within available state appropriations.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:100. Public agency adoptions.

RELATES TO: KRS 194A.060(1), 199.011(4), (10)[~~(9)~~], 199.430(3), 199.520, 199.525,[~~199.565,~~] 199.570, 199.572, 199.575, 202B.010(12), 600.020 (30), (52), (63)[~~(26), (47), (56)~~], 605.090, 615.030, 620.050, 620.360, 625.045, 625.108, Chapter 625, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the welfare of the citizens of the Commonwealth. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet. This administrative regulation establishes the procedures for public agency adoptions.

Section 1. Definitions. (1) "Approved adoptive parent" means a family approved in accordance with:

(a) 922 KAR 1:310;

(b) 922 KAR 1:350; or

(c) Section 6 of this administrative regulation.

(2) "Child-focused recruitment model" or "C.F.R.M" means a program for the recruitment of an adoptive family in accordance with Section 2 of this administrative regulation by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified.

(3) "**Fictive kin" is defined by KRS 199.011(9).**

(4) "Foster family home" is defined by KRS 199.011(10)[~~(9)~~] and 600.020(30)[~~(26)~~].

(5)[~~(4)~~][~~(3)~~] "Home study" means an evaluation conducted in accordance with the requirements of the state where the home is located, to determine the preparation and suitability of a prospective[~~proposed~~] adoptive parent, including the home environment, to receive a child for the purpose of adoption.

(6)[~~(5)~~][~~(4)~~] "Open adoption" means an agreement between an adoptive parent and an adopted child's biological or legal parent regarding communication or contact with the child.

(7)[~~(6)~~][~~(5)~~] "Pre-adoptive placement" means a home, approved by the cabinet, where a child legally free for adoption is placed prior to adoption finalization.

(8)[~~(7)~~][~~(6)~~] "Pre-placement conference" means a meeting conducted by cabinet staff with a prospective adoptive parent that fulfills requirements specified in Section 4 of this administrative regulation.

(9)[~~(8)~~][~~(7)~~] "Prospective adoptive parent" means an individual who has applied with a Kentucky or an out-of-state public or licensed private child welfare agency to be approved as an adoptive parent.

(10)[~~(9)~~][~~(8)~~] "Qualified mental health professional" or "QMHP" is defined by KRS 600.020(52)[~~(48)~~].

(11)[~~(10)~~] "Qualified professional in the area of intellectual disabilities" [~~(9) "Qualified mental retardation professional" or "QMRP"~~] is defined by KRS 202B.010(12).

(12)[~~(11)~~][~~(10)~~] "Social service worker":

(a) Is defined by KRS 600.020(63)[~~(56)~~]; or

(b) Means a social or human service worker with an out-of-state public or licensed private child welfare agency who meets the requirements of that state to conduct a home study.

[~~(11) "Special Needs Adoption Program" or "SNAP" means a program for the recruitment of an adoptive family by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified within thirty (30) days following the termination of parental rights, in accordance with KRS Chapter 625.~~]

Section 2. Eligibility and Referral to the Child-Focused Recruitment Model. A child may be referred to C.F.R.M if the child:

(1) Is determined eligible, as special needs, in accordance with 42 U.S.C. sec. 673;

(2) Has a goal of planned permanent living arrangement or long-term foster care;

(3) Is on extended commitment and has had parental rights terminated; or

(4) Has adoption as the child's case plan goal and does not have an adoptive resource identified.

Section 3[~~2~~]. Preparation of the Child for Adoptive Placement. (1) A child prepared for adoptive placement by cabinet staff shall receive information regarding the following, with consideration given to the child's maturity and developmental stage:

(a) Relationship to the biological or legal parent;

(b) Entitlement to a parent;

(c) If applicable, relationship with the foster family home;

(d) Reason the foster placement may not become the adoptive placement;

(e) Role of the social service worker, other pertinent cabinet staff, and the child in the placement planning process;

(f) Meaning of adoption;

(g) Process of recruitment of a parent and how the child may be involved;

(h) Impending placement;

(i) Visitation process;

(j) Placement decision; and

(k) Cabinet staff responsible for the placement decision.

(2) Cabinet staff shall:

(a) Request the biological or legal parent to either consent or refuse to consent to the inspection of the adoption records by the adult adopted person when the child reaches twenty-one (21) years of age; and

(b) File with the circuit or family court in the county where the adoption was finalized the consent or refusal to consent to the inspection of the adoption records by the adult adopted person.

(3) If a child's permanency goal includes adoption and reunification with a sibling separated during foster care, the cabinet shall plan for the transition[~~reunion~~] and coordinate increased visitation between siblings.

(4) If cabinet staff agree by consensus during a planning conference, a sibling may be separated from another sibling in adoption upon consideration of:

(a) If age appropriate, each sibling's understanding of the facts of the relationship, feelings, wishes, and ideas regarding options for placement;

(b) The perception of the relationship of each child with the sibling; and

(c) The recommendation of a:

1. QMHP; or

2. If applicable, a qualified professional in the area of intellectual disabilities[~~QMRP~~].

(5) A planning committee shall convene annually for siblings who remain separated in out-of-home care to:

(a) Determine if reunification is possible; and

(b) Develop a plan for maintaining sibling connections.

(6) A QMHP, qualified professional in the area of intellectual disabilities[~~QMRP~~], relative, social service worker, other pertinent cabinet staff, nonadoptive foster parent, or another individual approved by cabinet staff may assist with preparing the child for adoption.

(7)[~~(6)~~] If the child's goal is changed to adoption, a child in the custody of the cabinet may be placed with an approved adoptive parent prior to the termination of parental rights to the child.

(8)[~~(7)~~] If a prospective adoptive parent has not been identified for a child after the child's permanency goal has been changed to adoption in accordance with 922 KAR 1:140, the cabinet:

(a) Shall convene an adoption review committee[~~comply with the Swift adoption procedures in accordance with KRS 199.565~~] to meet and discuss child-specific recruitment and the potential strengths and barriers of placement with an identified[~~a~~] prospective adoptive parent;

(b) May invite an individual specified in subsection (6)[~~(5)~~] of this section to a meeting in which the child's permanency plan is discussed;[~~and~~]

(c) Shall refer the child to the C.F.R.M in accordance with Section 2 of this administrative regulation; and

(d)[~~(c)~~] Shall refer[~~register~~] the child to the Adoption Services Branch[~~with SNAP~~] in accordance with Section 7(1)[~~6(1)~~] of this administrative regulation.

Section 4[~~3~~]. Selection of an Adoptive Family. (1) Priority consideration for an adoptive placement shall be given to:

(a) A relative **or fictive kin**; or

(b) The current foster family home.

(2) The process of recruiting a prospective adoptive parent shall begin if:

(a) Parental rights of the child are terminated;

(b) A relative **or fictive kin** has not made a commitment to adopt the child;

(c) The child's foster family home has not made a commitment to adopt through a statement of intent;

(d) Both biological or legal parents of the child are deceased, and the[~~designated~~] cabinet has[~~staff have~~] been granted custody through the court; or

(e) The child's pre-adoptive placement is disrupted.

(3) Prior to placement, cabinet staff shall consider the prospective adoptive parent's acceptance of the child's behavior and characteristics.

(4) (a) The cabinet shall take the following into consideration regarding the number of children to be placed in an adoptive home:

1. The prospective adoptive parent's parental capacity and resources to meet the needs of all children in the home; and

2. The impact of all children involved, including the potential adoptive child.

(b) A prospective adoptive parent may request review of a denial based upon the number of children in the home in accordance with 922 KAR 1:350, Section 8(2).[~~Unless an exception has been approved as described in 922 KAR 1:350, Section 2(2), or by the completion of the DPP-112C, Adoption Placement Exception Request, the following requirements shall apply to a prospective adoptive parent:~~

~~(a) No more than five (5) children, including prospective adoptive parent's own children, shall live in the prospective adoptive parent's home; and~~

~~(b) No More than two (2) children under age two (2), including the prospective adoptive parent's own children, shall live in the prospective adoptive parent's home.~~]

(5) The cabinet shall:

(a) Review and obtain the prospective adoptive parent's signature on the DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet; and

(b) Inform the prospective adoptive parent of:

1. Visitation and supervision requirements in accordance with

KRS 605.090(1)(b); and

2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:

a. Health, background, and placement history;

b. Behavior, including behaviors in accordance with KRS 605.090(1); and

c. Personal characteristics.

Section 5[4]. Preparation of the Prospective Adoptive Parent. (1) Cabinet staff shall conduct a preplacement conference for a child available for adoption with the child's:

(a) Foster parent;

(b) Prospective adoptive parent;

(c) If applicable, a QMHP or qualified professional in the area of intellectual disabilities[~~QMRP~~]; and

(d) A representative[~~If applicable, social service worker~~] from the cabinet or child-placing agency where the child is placed.

(2) During the pre-placement conference, cabinet staff shall:

(a) Discuss the information provided in accordance with Section 4(5)(b)[~~3(5)(b)~~] of this administrative regulation with the prospective[~~approved~~] adoptive parent;

(b) Assist the prospective[~~approved~~] adoptive parent in reaching a decision regarding acceptance of placement;

(c) Determine the method of presenting the prospective[~~approved~~] adoptive parent to the child; and

(d) Discuss with the prospective adoptive parent acceptance of the child's plan for visitation and placement.

(3) If there is a planned foster parent adoption, the preplacement conference may occur at the same time the adoptive placement agreement is signed in accordance with KRS 199.555.

Section 6[~~5~~]. Adoptive Placement. (1) Planned visitation between a child older than one (1) month and a prospective adoptive parent shall occur at least two (2) times prior to placement.

(2) After parental rights to the child are terminated, final placement with a prospective adoptive parent shall occur as quickly as possible upon concurrence of:

(a) Cabinet staff;

(b) The prospective adoptive parent;[~~and~~]

(c) The recommendation of a qualified professional in the area of intellectual disabilities, if applicable; and

(d) The child, to the extent the child's age and maturity permit the child's participation.

(3) Adoption assistance shall be provided in accordance with 922 KAR 1:050 or 922 KAR 1:060.

Section 7[~~6~~]. Out-of-State Adoptive Placement. (1) If a prospective adoptive parent has not been identified after the child has been referred to the C.F.R.M[~~by the time the child becomes available for adoption~~], cabinet staff shall:

(a) Consider an out-of-state placement; and

(b) Refer the child to the Adoption Services Branch for referral on the adoption website[~~SNAP~~] if**[~~:~~**

~~1.~~] termination of parental rights has been granted**[~~; and~~**

~~2. No adoptive placement has been identified through the C.F.R.M program~~][~~within thirty (30) days following the termination of parental rights~~].

(2) Placement of a Kentucky child with an out-of-state prospective adoptive parent may occur if:

(a) The prospective adoptive parent is seeking a child through:

1. An out-of-state public child welfare agency; or

2. A licensed private child welfare agency; and

(b) A home study has been completed or updated within one (1) year by the out-of-state public child welfare agency or licensed private child welfare agency, in accordance with the requirements of the out-of-state agency.

(3) If a prospective adoptive parent who resides out-of-state cannot pay the expense to attend a pre-placement conference or visit the child, the cabinet may pay travel expenses for the prospective adoptive parent, to the extent funds are available.

(4) If the Kentucky and out-of-state deputy compact administrators agree to the child's visit in accordance with KRS 615.030, a child may visit and be placed with a prospective adoptive parent who resides in another state, in accordance with KRS 615.030.

(5) Upon approval of the commissioner or designee, cabinet staff or another adult whom the child knows shall accompany a Kentucky child available for adoption on an out-of-state visit or placement with a prospective out-of-state adoptive parent.

Section 8[~~7~~]. Open Adoption. The cabinet shall not prohibit an open adoption.

Section 9[~~8~~]. Postplacement Service. (1) The goal of a postplacement service shall be to:

(a) Ensure the success of the placement; and

(b) Prevent disruption of the placement.

(2) The cabinet shall coordinate support services for a child and a prospective adoptive parent prior to the legal adoption and through finalization of the adoption.

(3) Until the adoption judgment has been granted by a court of competent jurisdiction, the cabinet shall conduct an annual permanency review of a child placed with a prospective adoptive parent.

(4) Post-Adoption Placement Stabilization Services (PAPSS) shall be offered in accordance with 922 KAR 1:530.

Section 10[~~9~~]. Closure of An Approved Adoptive Home. Unless an extension is approved by the commissioner, closure of an approved adoptive home shall occur in accordance with:

(1) 922 KAR 1:310; or

(2) 922 KAR 1:350.

Section 11[~~10~~]. Service Appeals. A service appeal may be requested in accordance with 922 KAR 1:320.

Section 12[~~11~~]. Confidentiality of Records. (1) A child's records shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, as described by KRS 194A.060(1), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 620.050, 625.045, 625.108, and 922 KAR 1:510.

(2) If the child is not adopted, the prospective adoptive parent shall return all documentation pertaining to the child to the cabinet within ten (10) working days of the decision not to adopt.

Section 13[~~12~~]. Request for Information from Adoption Records. (1) Identifying information from the cabinet's record may be released only upon written order by the court upon application to the circuit court that granted the adoption by an adoptee, twenty-one (21) years of age or older.

(2) If the birth parent has not previously filed consent for release of identifying information with the circuit court, the judge may:

(a) Issue a court order requiring the cabinet to conduct a search for each birth parent as identified on the original birth certificate; and

(b) Determine the parent's desire concerning the release of identifying information from the record.

(3) Upon receipt of written request by the adult adoptee or the adoptive family, nonidentifying health and background information may be released by the cabinet from a closed adoption record.

(4) If a request is received from an adoptee, eighteen (18) years of age or older, for contact with an adult preadoptive birth sibling separated during finalization of a closed adoption, cabinet staff shall:

(a) Review the adoption record; and

(b) Release identifying information if a mutual request for contact is contained within the record.

(5) If a request is received from a birth relative seeking an adoptee, either adult or minor, information may be given that adoption did occur and reassurance of the well-being of the adoptee at last contact may be confirmed, but cabinet staff shall not contact an adoptee or adoptive family at the request of the birth

family.

(6) If an adult adoptee seeks contact with the birth family, cabinet staff shall inform the adult adoptee of a birth relative's interest.

Section 14[~~13~~]. Incorporation by Reference. (1)[~~The following material is incorporated by reference:~~

~~(a)~~] "DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet", 9/18, is incorporated by reference[~~edition 9/08; and~~

~~(b) "DPP-112C, Adoption Placement Exception Request", edition 9/08~~].

(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.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes policy and procedures for public agency adoptions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish policy and procedures related to public agency adoptions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the policy and procedures for public agency adoptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes through its establishment of policy and procedures for public agency adoptions.

(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 definition related to the Special Needs Adoption Program due to its negative implication that the children waiting to adopted fall into a "special needs" criteria. Additionally, the amendment adds language regarding the child-specific recruitment employed by Kentucky in order to ensure permanency for children. Additional changes were made to better ensure sibling connections are maintained and remove arbitrary restrictions on the number of children who can be placed in a home. The amendment also makes technical corrections in accordance with KRS Chapter 13A. This administrative regulation was amended in response to comments to include fictive kin and delete a duplicative statement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to realize changes in practice that have occurred as a result of the state's child welfare transformation efforts and House Bill 1 of the 2018 Regular Session.

(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 updating public agency adoptions' policy and procedures in accordance with House Bill 1 of the 2018 Regular Session and child welfare transformation efforts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by improving policy and procedures applicable to public agency adoptions in accordance with House Bill 1 of the 2018 Regular Session and child welfare transformation efforts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,065 adoption finalizations in Kentucky in 2017.

(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: Foster children awaiting adoption will have improved connection with siblings and permanency services provided by the cabinet in accordance with House Bill 1 of the 2018 Regular Session and the state's child welfare transformation efforts.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children in foster care will benefit from improved sibling connections, child-focused recruitment efforts, and enhanced considerations of prospective adoptive parents resources verses an arbitrary cap on the number of children in a prospective adoptive home.

(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 be implemented within available federal and state appropriations for the department.

(b) On a continuing basis: The amendment to this administrative regulation will be implemented within available federal and state appropriations for the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Title IV-E and Title IV-B funds made available under the Social Security Act and general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Public agency adoptions are implemented in a like manner statewide for children in foster care.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

2. State compliance standards. KRS 194A.050(1), 199.472

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This

administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

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

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

(c) How much will it cost to administer this program for the first year? The administration of this program is projected to fall within available federal and state appropriations for the first year.

(d) How much will it cost to administer this program for subsequent years? The administration of this program is projected to fall within available federal and state appropriations 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:

PROPOSED AMENDMENTS

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:120. Additional and emergency precinct officers.

RELATES TO: KRS 117.015, 117.045
STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.045(5),(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation establishes the conditions under which additional precinct officers may be approved, and establishes the form of the list of emergency election officer appointments required by KRS 117.045(5).

Section 1. Request to Appoint Additional Precinct Officers. A county board of elections seeking permission to appoint additional precinct officers, pursuant to KRS 117.045(6), shall file with the State Board of Elections SBE 23, Additional Precinct Officer Request, that contains the following information:
(1) The precinct number of each precinct for which approval of additional officers is sought;
(2) For each designated precinct, the reasons additional precinct officers are necessary;
(3) For each designated precinct, whether one (1) or two (2) additional precinct officers are requested; and
(4) The election for which approval is sought, designating whether the election is a primary, general, or special election.

Section 2. Approval of Request.
(1) The State Board of Elections may approve a request to appoint additional precinct officers if the request sets forth a reasonable explanation why voting may not be conducted safely and expediently unless additional precinct officers are appointed.
(2) The county board of elections shall submit these requests to the State Board of Elections at least fourteen (14) days prior to election day. If the request for additional precinct officers is not received by the State Board of Election at least fourteen (14) days prior to election day, then the State Board of Elections may deny the request.
(3) Approval of a request to appoint additional precinct officers shall be granted for one (1) election only.
(4)[~~(3)~~] Approval of a request to appoint additional precinct officers may authorize a county board of elections to appoint one (1) or two (2) additional precinct officers.
(5)[~~(4)~~] If a county board of elections requests and is approved to appoint two (2) additional precinct officers:
(a) The two (2) additional precinct officers shall not be of the same political party; and
(b) If it appears from the list of additional precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the two (2) additional precinct officers are of the same political party, then the State Board of Elections may deny[~~shall revoke its~~] approval of the request to appoint additional precinct officers [~~and the appointments shall be invalid~~].

Section 3. Duties of Additional Precinct Officers. The duties of additional precinct officers shall be prescribed by the county board of elections.

Section 4. Request to Appoint Emergency Precinct Officers.
(1) A county board of elections seeking permission to appoint emergency precinct officers pursuant to KRS 117.045(5) shall file with the State Board of Elections a SBE Form 24, Emergency Precinct Officer Request, that[~~which~~] contains the following information:
(a)[~~(1)~~] The precinct number of each precinct for which approval of emergency[~~additional~~] officers is sought;
(b)[~~(2)~~] The name of the officer requested, the registered party of the officer, and the party the officer will be serving as for the specified election;
(c)[~~(3)~~] The election for which approval is sought, designating whether the election is a primary, general, or special election; and
(d)[~~(4)~~] A description of the efforts made to acquire precinct officers in the party, democrat or republican, that[~~which~~] did not have enough workers as required by KRS 117.045(5).
(2) If a county board of elections requests and is approved to appoint emergency precinct officers, the procedures established in this subsection shall apply:
(a) If more than one (1) emergency precinct officer is needed, the county clerk shall make every effort to ensure the emergency precinct officers are of equal political party representation;
(b) If it appears from the list of emergency precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the emergency precinct officers submitted will result in an imbalance between the political parties represented by the State Board, then the State Board of Elections may deny the request to appoint emergency precinct officers.
(c) If the State Board denies the list of emergency precinct workers as provided in Section 4(2)(b) above, the State Board may direct the county board of elections to take other action such as appointing properly trained officers from within or outside the affected county in order to ensure the balance prescribed in KRS 117.045(4). The State Board may provide training for, or ensure training is provided to, emergency precinct election officers referenced in this section and the training for the emergency precinct election workers shall be determined on an individualized basis.

Section 5. Incorporation by Reference.
(1) The following material is incorporated by reference:
(a) "Additional Precinct Officer Request", SBE 23, January 2015 edition; and
(b) "Emergency Precinct Officer Request", SBE 24, August 2007 edition.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State
APPROVED BY AGENCY: December 6, 2018
FILED WITH LRC: December 12, 2018 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2019, 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 (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2019. 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: Erica Galyon, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687. email Erica.galyon@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Erica Galyon
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the conditions under which additional and emergency precinct officers may be approved.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving additional and emergency precinct officers.

(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 117.045, this administrative regulation is necessary to establish the procedure for approving additional and emergency precinct officers.

(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 approving additional precinct officers.

(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 outlines the requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment provides some guidance and consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to outline requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment is necessary to ensure guidance and consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.045.

(d) How the amendment will assist in the effective administration of the statues: This amendment outlines the requirement that the county board of elections submit the list of additional precinct election officers to the State Board of Elections by a certain date. Additionally, this amendment provides guidance and consistency in the conditions for appointment of additional precinct officers and emergency precinct officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects county boards of elections.

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation facilitates the ability of county board of elections to provide for statutorily required election officers and provides procedural consistency in the process for appointing additional and emergency precinct officers.

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

(a) Initially: There will be negligible costs to implement this administrative regulation for the first year.

(b) On a continuing basis: There is negligible 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: Existing appropriations for county boards of elections and the State Board of Elections.

(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 similarly situated individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the county boards of election.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.015 and KRS 117.045.

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? Cost to implement this administrative regulation for the first year will be negligible.

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. While no significant cost is anticipated, there may be negligible costs related to identifying, communicating with and training emergency precinct officers.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 16:250. Net operating loss computation and deduction for corporations.

RELATES TO: KRS 141.011, 141.200, 141.201, 141.202

STATUTORY AUTHORITY: KRS 131.130~~, 141.018~~

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws.[~~ KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts ch. 168 relative to the imposition of the tax assessed under KRS Chapter 141 on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit.~~] This administrative regulation establishes methods of computing a corporation's net operating loss deduction and application of the deduction to[~~prior and~~] subsequent taxable years on taxable net income as

authorized by KRS 141.011, [~~and~~] 141.200(11)(b) and KRS 141.202(5).

Section 1. Definitions.

(1) "Combined group" is defined by KRS 141.202(2)(a).["~~Allowable net operating loss carryforward from a previous period" means for a nexus consolidated filer, a net operating loss carryforward computed under the provisions of Section 2(3) or (4) of this administrative regulation.~~]

(2) "Combined group filer" means a group of corporations filing in accordance with KRS 141.202.

(3) "Combined group return" means a return filed under KRS 141.202(3).

(4)[~~(2)~~] "Corporation" is defined by:

(a) KRS 141.202(2)(b)[~~141.200(2)(d)~~] for a combined group[~~an elective consolidated~~] return; or

(b) KRS 141.010(4)[~~141.010(24)~~] for a separate[~~ or nexus consolidated~~] return for periods beginning on or after January 1, 2018; or[~~2005~~]

(c) KRS 141.201(2)(d) for an elective consolidated return.[~~(3) "Corporation income tax nexus" means being subject to the corporation income tax imposed by KRS 141.040(1).~~

~~(4) "Current year loss limitation" means the limitation provided by KRS 141.200(11)(b).~~

~~(5) "Current year loss limitation adjustment" means the amount of net operating losses of the includible corporations in a nexus consolidated return, including any allowable net operating loss carryforward from a previous period that exceeds the current year loss limitation.~~]

(5) "Doing business in this state" is defined by KRS 141.010(7).

(6) "Elective consolidated filer" means a corporation as defined in Section 7701(a)(3) of the Internal Revenue Code, 26 U.S.C. 7701(a)(3), filing in accordance with KRS 141.201[~~141.200(3) and (4)~~].

(7) "Elective consolidated return" means a return defined under KRS 141.201(2)(b)[~~141.200(2)(b).~~

~~(8) "Includible corporation" is defined in KRS 141.200(9)(d)~~].

(8)[~~(9)~~] "Net operating loss" means net operating loss defined under the Internal Revenue Code as adjusted for differences between KRS Chapter 141 and the Internal Revenue Code.

(9)[~~(10)~~] "Nexus consolidated filer" means a corporation as defined under KRS 141.010(4) or 141.900(24)[~~141.010(24)~~], filing in accordance with KRS 141.200(8), (9), (10) and (11).

(10)[~~(11)~~] "Nexus consolidated return" means a return defined under KRS 141.200(9)(g)[~~(f)~~].

(11)[~~(12)~~] "Separate return" is defined by KRS 141.201(2)(c)[~~141.200(2)(c) or 141.200(9)(g)~~].

(12)[~~(13)~~] "Separate return filer" means a corporation filing in accordance with KRS 141.201(3)[~~141.200(3) or 141.200(10)~~].

Section 2. Computation and Application of Net Operating Loss.

(1) Combined group filers, elective consolidated filers, and separate["~~Separate~~] return filers[~~" and "elective consolidated filers"~~] shall compute net operating loss for Kentucky purposes in the following manner:

(a) For combined group returns and elective consolidated returns, the net operating loss shall be multiplied by the group's apportionment[~~Apportionment~~] factor provided by KRS 141.120 or 141.121;[~~shall be applied to the net operating loss; and~~]

(b) For separate returns, the net operating loss shall be multiplied by the apportionment factor provided by KRS 141.120 or KRS 141.121; and

(c)[~~(b)~~] The apportioned net operating loss shall be available for carryforward.[~~(2) "Nexus consolidated filers" shall compute net operating loss for Kentucky purposes in accordance with this subsection:~~

~~(a) Net operating loss computations shall be made before application of the apportionment factor provided by KRS 141.120.~~

~~(b) The current year loss limitation adjustment shall be:~~

~~1. Added to net income if the total of the net operating losses for the includible corporations that have incurred a net operating loss for the current taxable year and any allowable net operating loss carryforward from a previous period exceeds the current year loss limitation; or~~

~~2. Subtracted from net income if the current year loss limitation is greater than the total of the current year losses of includible corporations and any allowable net operating loss carryforward from a previous period.~~

~~(c) Any current year loss limitation adjustment that exceeds the current year loss limitation shall be available as a Kentucky net operating loss carryforward, and shall be available to be applied against the current year loss limitation for future taxable periods pursuant to KRS 141.200(11)(b).~~

~~(3) Separate return loss year rules for a nexus consolidated return. This subsection shall apply if a corporation that previously filed a separate return, and incurred net operating losses as a separate entity, will now be filing as part of a consolidated nexus return, and establishes how those separate net operating losses shall be treated as part of the consolidated nexus return.~~

~~(a) Separate entity filers having a net operating loss carryforward for the most recent period that began prior to January 1, 2005, may carry that loss forward to the first return filed under the nexus consolidated requirements pursuant to KRS 141.200(11), if:~~

~~1. The separate return filer had nexus for Kentucky corporation income tax purposes for the separate return periods that generated the loss; and~~

~~2. A supplemental statement as required by paragraph (c) of this subsection of this subsection, is attached to the return.~~

~~(b) The net operating loss carryforward shall be adjusted to a pre-apportionment amount unless an election has been made to utilize the net operating loss carryforward as an apportioned amount.~~

~~(c) A supplemental statement shall be attached to the Kentucky consolidated return that reflects a breakdown of the separate return loss carryforward amounts by entity.~~

~~(4) Elective consolidated net loss carryforward to a nexus consolidated return period. This subsection shall apply if an elective consolidated filer who incurred net operating losses as a consolidated group will now be filing as part of one or more consolidated nexus returns, and establishes how those elective consolidated net operating losses shall be treated for purposes of the consolidated nexus return.~~

~~(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to the first return filed under the nexus consolidated requirements pursuant to KRS 141.200(11).~~

~~(b) Any net operating loss carryforward from the last return of an elective consolidated group shall be computed under the provisions of Section 1502 of the Internal Revenue Code, 26 U.S.C. 1502 and related federal regulations and be adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.~~

~~(c) The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post apportionment loss to be utilized in computing the current year loss limitation.~~

~~(d) If any of the corporations that filed as part of the elective consolidated return did not have nexus with Kentucky for the consolidated return periods that generated the net operating loss, that corporation's share of the net operating loss shall not be carried forward to a nexus consolidated return.~~

~~(e) If the election period defined in KRS 141.200(2)(e) has expired and the elective consolidated return group is survived by one or more nexus consolidated groups, the requirements established in this paragraph shall apply.~~

~~1. Compute on a separate entity basis, the pre-apportionment loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return reflecting this computation.~~

~~2. The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry~~

~~forward a post-apportionment loss to be utilized in computing the current year loss limitation.~~

~~3. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all separate entity losses together;~~

~~b. Divide each separate entity loss amount by the total of the separate entity losses; and~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward.~~

~~4. Carry the loss carryforward amount calculated in subparagraph 3c of this paragraph to the nexus consolidated return in which the corporation is an includible corporation under the provisions of KRS 141.200(9) through (14).~~

~~(5)~~](2) Elective consolidated filer net operating loss carryforward to a combined group return or separate returns[~~return filer~~]. This subsection shall apply if an elective consolidated filer who has incurred net operating losses as a consolidated group will now be filing combined group returns or separate entity returns, and establishes how those elective consolidated net operating losses shall be treated for purposes of the combined group returns or separate entity returns.

(a) An elective consolidated filer having a net operating loss carryforward on[~~for~~] the last elective consolidated return may carry that loss forward to combined group returns or separate returns[~~filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g)~~]. The following requirements shall apply to this situation:~~.~~

1. Determine the post-apportioned elective consolidated group net operating loss carryforward. The elective consolidated group's apportionment factor provided by KRS 141.120, KRS 141.121, or KRS 141.901 shall be used to determine the post-apportioned net operating loss.

2. Determine the years that are in the post-apportioned elective consolidated group net operating loss carryforward. All post-apportioned net operating loss carryforwards shall be used on a first-in-first-out basis (i.e., most recent losses remain).

3. Determine each loss corporation's share of the net operating loss for each year in the following manner:

a. Allocate the post-apportioned elective consolidated group net operating loss carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, the post-apportioned net operating loss shall be prorated for that year proportionally based on the loss generated by each member.;

b. Add together each loss corporation's allocated share of the losses for each year it was a member of an elective consolidated group; and

c. Carry the separate entity net operating loss carryforward computed in clauses a. to c. of this subparagraph to the first combined group return or separate return due after the elective consolidated return.

4. No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of an elective consolidated return.

(3)[~~Compute on a separate entity basis, the post-apportionment Kentucky loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return and the separate corporation returns reflecting this computation.~~

~~2. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all separate entity losses together;~~

~~b. Divide each separate entity loss amount by the total of the separate entity losses;~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward; and~~

~~d. Carry the separate entity loss computed in clauses a to c of this subparagraph to the first separate return due after the expiration of the elective consolidated return.~~

~~(6)~~] Nexus consolidated net operating loss carryforward to a combined group return, an elective consolidated return, or a separate return period. This subsection shall apply if a nexus consolidated filer ceases to exist who had incurred net operating losses as a consolidated group[~~, and will now be filing separate entity returns,~~] and establishes how those nexus consolidated net operating losses shall be treated[~~for purposes of the separate entity returns~~].

(a) If a nexus consolidated filer ceases to exist or a member leaves the group and a consolidated net operating loss carryforward exists, that net operating loss carryforward may be carried forward to the combined group return, the elective consolidated return, or the separate returns[~~ filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g)~~]. The following requirements shall apply to this situation:[~~.~~]

1. Determine the pre-apportioned nexus consolidated group net operating loss carryforward.

2. Determine the years that are in the pre-apportioned nexus consolidated group net operating loss carryforward. All pre-apportioned net operating loss carryforwards shall be used on a first-in-first-out basis (i.e., most recent losses remain).

3. Determine each loss corporation's share of the net operating loss for each year in the following manner:

a. Allocate the pre-apportioned nexus consolidated group net operating loss carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, the pre-apportioned net operating loss shall be prorated for that year proportionally based on the loss generated by each member in that year.

b. Multiply the pre-apportioned net operating loss carryforward amounts as assigned to the members by nexus consolidated group's apportionment factor in each year a net operating loss exists to determine the post-apportioned net operating loss that member may carryforward in the future. The apportionment factor calculation is provided by KRS 141.120, KRS 141.121, or KRS 141.901;

c. Add together the losses generated for each loss corporation during the time in which it was included in a nexus consolidated return; and

d. Carry the separate entity net operating loss carryforward computed in clauses a. to c. of this subparagraph to the first combined group return, elective consolidated return, or separate return due after the nexus consolidated group ceases to exist.

4. No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of a nexus consolidated return. To generate a net operating loss in this state, a taxpayer must be doing business in this state in the year in which the loss is generated.[~~Compute on a separate entity basis, the post-apportionment Kentucky loss for each loss corporation that was included as part of the consolidated net operating loss computed on the last return filed by the nexus consolidated group. The separate entity net operating loss carryforward shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with each separate corporation return reflecting this computation.~~

~~2. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all the separate entity computed losses together;~~

~~b. Divide each separate loss amount by the total consolidated loss amount;~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward; and~~

~~d. Carry the separate entity net operating loss carryforward computed in clauses a to c of this subparagraph to the first separate return due after the nexus consolidated group ceases to exist.~~

~~(7) Partnerships and limited liability entities that are subject to the corporation income tax imposed by KRS 141.040 that are owned by corporations as defined by KRS 141.010(24) shall be allowed to take a net operating loss deduction on their corporate income tax return for taxable periods beginning on or after January~~

~~1, 2006 for net operating loss carryforwards at the entity level.~~]

Section 3. Net Operating Loss Limitation. (1) Corporations that generated net operating losses may carryforward those losses to deduct against taxable net income. The deduction for losses generated for tax years beginning on or after January 1, 2018, shall be limited to eighty (80) percent of the taxable net income as allowed by Section 172 of the Internal Revenue Code.

(2) Nexus consolidated returns shall be subject to the fifty (50) percent limitation as required in KRS 141.200(11)(c).

Section 4. Net Operating Losses by Corporations Included in a Combined Group Return. This subsection shall apply if a net operating loss is generated by a corporation included in a combined group return.

(a) Net operating losses generated by corporations included in a combined group shall not be used to offset income of other corporations included in the combined group.

(b) Net operating losses may be carried forward to subsequent years.

(c) Net operating losses may only be used if the corporation that generated the loss has taxable net income in subsequent years.

(d) All net operating loss carryforwards shall be used on a first-in-first-out bases (i.e., most recent losses remain).

(e) No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of a combined group return.

Section 5[~~3~~]. This administrative regulation shall apply to the computation of the net operating loss deduction of corporations for taxable years beginning on or after January 1, 2018[~~2005~~], except where otherwise noted in this administrative regulation.

Section 6. Examples for the computation and application of net operating losses. The following examples relate to the net operating loss computations found in Section 2 of this administrative regulation:

Example 1 – Member Leaves Nexus Consolidated Group

Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, have nexus in Kentucky. Parent Corporation files nexus consolidated group returns for Year 1 through Year 4, but Sub A will not be included in the group in Year 4. Parent Corporation has a pre-apportioned nexus group NOL carryforward of $85,000 at the end of Year 3 (see Figure 1-1). Apportionment factors for each member are given below (see Figure 1-2).

Figure 1-1

	Year 1	Year 2	Year 3
Sub A Income/(Loss)	($25,000)	($25,000)	($15,000)
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)
Group Income/(Loss)	($45,000)	($10,000)	$10,000
Nexus Group NOL Adjustment	45,000	25,000	15,000
Group Taxable Income	0	15,000	25,000
Accumulating Group NOL Carryforward	$45,000	$70,000	$85,000

Figure 1-2

	Year 1 Apportionment Factor	Year 2 Apportionment Factor	Year 3 Apportionment Factor	Year 4 Apportionment Factor
Nexus Group	23%	28%	32%	17%

The following steps determine the post-apportioned net operating loss ("NOL") assigned to Sub A when it departs the group as well as the pre-apportioned NOL that will be carried forward by the group to Year 4.

1. Determine the pre-apportioned group NOL carryforward: $85,000 (see Figure 1-1).

2. Determine what years are in the pre-apportioned group NOL carryforward assuming all pre-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

a. Year 3 Losses Remaining: $40,000

b. Year 2 Losses Remaining: $40,000

c. Year 1 Losses Remaining: $5,000

3. Allocate the pre-apportioned group NOL carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, prorate the pre-apportioned NOL carryforward for that year proportionally based on the loss generated by each member (see Figure 1-3).

Figure 1-3

	Year 1*	Year 2	Year 3
Sub A Loss	$2,777	$25,000	$15,000
Sub B Loss **	1,111	10,000	10,000
Sub C Loss **	556	-	-
Parent Corporation Loss **	556	5,000	15,000
Group NOL	$5,000	$40,000	$40,000
** Remaining Members' NOL	$2,223	$15,000	$25,000

* Sub A: $25,000/$45,000 X $5,000 = $2,777

Sub B: $10,000/$45,000 X $5,000 = $1,111

Sub C: $5,000/$45,000 X $5,000 = $556

Parent Corporation: $5,000/$45,000 X $5,000 = $556

4. Multiply the pre-apportioned NOL carryforward amounts assigned to the member that is leaving the group by the nexus consolidated group's apportionment factors in each year an NOL exists to determine the post-apportioned NOL that member may carryforward in the future (see Figure 1-4).

Figure 1-4

	Year 1	Year 2	Year 3
Sub A NOL Carryforward	$2,777	$25,000	$15,000
Nexus Group Apportionment Factor	23%	28%	32%
Post-Apportioned NOL Carryforward	$638	$7,000	$4,800

The nexus consolidated group will carryforward a pre-apportioned NOL of $42,223 ($2,223+$15,000+25,000) to Year 4 (see Figure 1-3), and Sub A will carryforward a post-apportioned NOL of $12,438 ($638+$7,000+$4,800) to Year 4 (see Figure 1-4).

Example 2 – Remaining Nexus Consolidated Group Dissolves

This example is a continuation of Example 1.

Parent Corporation and its two remaining subsidiaries, Sub B and Sub C, have nexus in Kentucky. Parent Corporation files nexus consolidated group returns for Year 1 through Year 4, but each group member will file separately in Year 5. Parent Corporation has a pre-apportioned nexus group NOL carryforward of $42,223 at the end of Year 3 (see Figure 1-3 from Example 1). Apportionment factors for each member are given below (see Figure 2-2).

Figure 2-1

	Year 1	Year 2	Year 3	Year 4
Sub B Income/(Loss)	($10,000)	($10,000)	($10,000)	($10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000	60,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)	(30,000)
Group Income (loss)				$20,000
Nexus Group NOL Adjustment				10,000

Group Taxable Income				30,000
Group NOL Generated	$2,223*	$15,000*	$25,000*	$52,223

* See Figure 1-3 from Example 1

Figure 2-2

	Year 1 Apportionment Factor	Year 2 Apportionment Factor	Year 3 Apportionment Factor	Year 4 Apportionment Factor
Nexus Group	23%	28%	32%	17%

The following steps determine the post-apportioned NOL that will be carried forward separately by each group member to Year 5 when the nexus consolidated group dissolves.

1. Determine the pre-apportioned group NOL carryforward: $52,223 (see Figure 2-1).

2. Determine what years are in the pre-apportioned group NOL carryforward assuming all NOL carryforward amounts are used on the first-in-first-out basis (i.e., most recent losses remain).

a. Year 4 Losses Remaining: $40,000

b. Year 3 Losses Remaining: $12,223

3. Allocate the pre-apportioned group NOL carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, prorate the pre-apportioned NOL carryforward for that year proportionally based on the loss generated by each member (see Figure 2-3).

Figure 2-3

	Year 3	Year 4
Sub B Loss	$4,890	$10,000
Parent Corporation Loss	$7,333	30,000
Group NOL	$12,223	$40,000

* Sub B: $10,000/$25,000 X $12,223 = $4,890

Parent Corporation: $15,000/$25,000 X $12,223 = $7,333

4. Multiply the pre-apportioned NOL carryforward amounts assigned to each member that is leaving the group by the nexus consolidated group's apportionment factors in each year an NOL exists to determine the post-apportioned NOL that member may carryforward in the future (see Figure 2-4).

Figure 2-4

	Year 3	Year 4
Sub B NOL Carryforward	$4,890	$10,000
Nexus Group Apportionment Factor	32%	17%
Sub B Post-Apportioned NOL Carryforward	$1,564	$1,700
Parent Corporation NOL Carryforward	$7,333	$30,000
Nexus Group Apportionment Factor	32%	17%
Parent Corp Post-Apportioned NOL Carryforward	$2,346	$5,100

Sub B will carryforward a post-apportioned NOL of $3,264 ($1,564+$1,700) to Year 5, and Parent Corporation will carryforward a post-apportioned NOL of $7,446 ($2,346+$5,100) to Year 5 (see Figure 2-4). The total post-apportioned NOLs carried forward to Year 5 is $10,710 (see Figure 2-4).

Example 3 – Member Leaves Elective Consolidated Group

Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, file elective consolidated group returns for Year 1 through Year 4, but Sub A will not be included in the group in Year 4. Parent Corporation has a post-apportioned elective consolidated group NOL carryforward of $23,500 at the end of Year 3 (see Figure 3-1).

Figure 3-1

	Year 1	Year 2	Year 3
Sub A Income/(Loss)	($25,000)	($25,000)	($15,000)
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)
Group Income/(Loss)	($45,000)	($10,000)	$10,000
Group Apportionment Factor	50%	40%	30%
NOL Generated/(Used)	22,500	4,000	(3,000)
Accumulating Group NOL Carryforward	$22,500	$26,500	$23,500

The following steps determine the post-apportioned NOL assigned to Sub A when it departs the group as well as the post-apportioned NOL that will be carried forward by the group to Year 4.

1. Determine the post-apportioned group NOL carryforward: $23,500 (see Figure 3-1).

2. Determine what years are in the post-apportioned group NOL carryforward assuming all post-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

a. Year 3 No NOL Generated

b. Year 2 Losses Remaining: $4,000

c. Year 1 Losses Remaining: $19,500

3. Prorate the post-apportioned group NOL carryforward by year to each loss corporation in each year proportionally based on the loss generated by each member (see Figure 3-2).

Figure 3-2

	Year 1*	Year 2**
Sub A Loss	$10,833	$2,500
Sub B Loss ***	4,333	1,000
Sub C Loss ***	2,167	-
Parent Corporation Loss ***	2,167	500
Group NOL	$19,500	$4,000
*** Remaining Members' Loss (per year)	$8,667	$1,500

* Sub A: $25,000/$45,000 X $19,500 = $10,833

Sub B: $10,000/$45,000 X $19,500 = $4,333

Sub C: $5,000/$45,000 X $19,500 = $2,167

Parent Corporation: $5,000/$45,000 X $19,500 = $2,167

** Sub A: $25,000/$40,000 X $4,000 = $2,500

Sub B: $10,000/$40,000 X $4,000 = $1,000

Parent Corporation: $5,000/$40,000 X $4,000 = $500

The elective consolidated group will carryforward a post-apportioned NOL of $10,167 to Year 4, and Sub A will carryforward a post-apportioned NOL of $13,333 to Year 4 (see Figure 3-2).

Example 4 – Remaining Elective Consolidated Group Dissolves

This example is a continuation of Example 3.

Parent Corporation and its two remaining subsidiaries, Sub B, and Sub C, file elective consolidated group returns for Year 1 through Year 4, but each group member will file separately in Year 5. Parent Corporation has a post-apportioned elective consolidated group NOL carryforward of $10,167 at the end of Year 3 (see Figure 4-1).

Figure 4-1

	Year 1	Year 2	Year 3	Year 4
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)	(15,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000	25,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)	(20,000)
Group Income/(Loss)				($10,000)
Group Apportionment Factor				30%

NOL Generated/(Used) per year	$8,667*	$1,500*	$ -	3,000
Accumulating Group NOL Carryforward	$8,667	$10,167	$10,167	$13,167

* See Figure 3-2 from Example 3

The following steps determine the post-apportioned NOL that will be carried forward separately by each group member to Year 5 when the elective consolidated group dissolves.

1. Determine the post-apportioned group NOL carryforward: $13,167 (see Figure 4-1).

2. Determine what years are in the post-apportioned group NOL carryforward assuming all post-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

a. Year 4 Losses Remaining: $3,000

b. Year 3 No NOL Generated

c. Year 2 Losses Remaining: $1,500

d. Year 1 Losses Remaining: $8,667

3. Prorate the post-apportioned group NOL carryforward by year to each loss corporation in each year proportionally based on the loss generated by each member (see Figure 4-2).

Figure 4-2

	Year 1**	Year 2**	Year 4*
Sub B Loss	4,333	1,000	1,286
Sub C Loss	2,167	-	-
Parent Corporation Loss	2,167	500	1,714
Group NOL	$8,667	$1,500	$3,000

* Sub B: $15,000/$35,000 X $3,000 = $1,286

Parent Corporation: $20,000/$35,000 X $3,000 = $1,714

** See Figure 3-2 from Example 3

Sub B will carryforward a post-apportioned NOL of $6,619 ($4,333+$1,000+$1,286) to Year 5, Sub C will carryforward a post-apportioned NOL of $2,167 to Year 5, and Parent Corporation will carryforward a post-apportioned NOL of $4,381 ($2,167+$500+$1,714) to Year 5 (see Figure 4-2). The total post-apportioned NOLs carried forward to Year 5 is $13,167 (see Figure 4-2).

DANIEL BORK, Commissioner

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on Wednesday, January 23, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments will be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue Tax Policy/Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides guidance for assigning net operating losses to members of a mandatory nexus group or elective consolidated group when members leave the group or the group is dissolved.

(b) The necessity of this administrative regulation: Kentucky statutes address the deductibility of net operating losses but do not provide detailed guidance for allocating losses generated by taxpayers that have filed group returns.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides guidance for properly tracking and assigning net operating losses so as to limit their deductibility to eligible taxpayers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides clear and detailed instructions for performing calculations necessary to assign group net operating losses to their individual component corporations.

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

(a) How the amendment will change this existing administrative regulation: This amendment aligns regulatory guidance with long-standing Department of Revenue procedures and policies for allocating net operating losses to group return members upon exiting the group.

(b) The necessity of the amendment to this administrative regulation: HB 487 requires a significant change in the composition of certain corporation income tax group filings, and this regulation provides current guidance for allocating net operating losses to the individual member corporations.

(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 statues: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All corporations required to change the composition of their group returns must follow this regulatory guidance for allocating net operating losses to member corporations.

(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: Corporations will be required to perform an allocation of net operating losses carried forward in accordance with guidance provided by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs have been estimated. Requirements in this regulation are no more onerous than the authorizing statutes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Net operating losses will be properly allocating to the correct taxpayers preserving potential deductibility in the future.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

be impacted by this administrative regulation? The Department of Revenue will be required to assist corporation taxpayers with implementation and determining compliance through desk and field audits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.011, 141.200, 141.201, 141.202, and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): $0

Expenditures (+/-): $0

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

RELATES TO: KRS 314.011, 314.042, Pub.L. 114-198

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing in Kentucky who prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Definitions.

(1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Buprenorphine" means the controlled substances Buprenorphine-Mono-Product and Buprenorphine-Combined-with-Naloxone.

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe Buprenorphine for Opioid Use Disorder unless that APRN possesses the minimum qualifications established in this section.

(1) The APRN shall obtain and maintain in good standing a DATA 2000 waiver and registration as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine for the treatment of Opioid Use Disorder.

(2) The APRN shall:

(a) Be a DEA-registered prescriber of Buprenorphine; and

(b) Have obtained medication assisted treatment education through completion of a Substance Abuse and Mental Health Services Administration (SAMHSA) sponsored course.

(3)[~~Only an APRN designated nurse practitioner may prescribe Buprenorphine.~~

~~(4)~~] The APRN shall provide to the board a copy of the DEA Controlled Substance Registration Certificate as required by 201 KAR 20:057, Section 6(4).

(4)[~~(5)~~] The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of Buprenorphine. This shall include the maximum number of patients, which may be seen by the APRN each year, and the inclusion of the special DEA identification number in addition to the regular DEA registration number on all prescriptions for opioid dependency treatment.

Section 3. Professional Standards for Prescribing Buprenorphine for Supervised Withdrawal or the Treatment of Opioid Use Disorder.

(1) Buprenorphine may be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with Opioid Use Disorder in accordance with the standards established by this administrative regulation.

(2) Buprenorphine-Mono-Product shall not be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with Opioid Use Disorder, except:

(a) To a pregnant patient, as established in subsection (4)(b) of this section;

(b) To a patient with demonstrated hypersensitivity to naloxone; or

(c) As an implant-delivered or injectable treatment administered in an APRN's office or other healthcare facility.

(3)(a) Except as provided in paragraph (b) of this subsection, Buprenorphine shall not be prescribed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of:

1. A physician certified in addiction medicine or psychiatry as required by 201 KAR 009:270;

2. An APRN who is certified in addiction therapy by the:

a. Addictions Nursing Certification Board;

b. American Academy of Health Care Providers in the Addictive Disorders; or

c. National Certification Commission for Addiction Professionals; or

3. A psychiatric-mental health nurse practitioner.

(b) An APRN may prescribe Buprenorphine to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each APRN who prescribes Buprenorphine for supervised withdrawal or for the treatment of Opioid Use Disorder shall fully comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall at a minimum include:

a. The patient's history of present illness;

b. The patient's history of drug use;

c. The patient's social and family history;

d. The patient's medical and psychiatric histories;

e. A physical examination of the patient;

f. Appropriate laboratory tests, which may include a complete blood count (CBC), a comprehensive quantitative drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology; and

g. An evaluation by a mental health provider with expertise in addiction and compliance with the recommendations of the evaluator.

2. Obtain the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records.

a. Upon receipt of the medical records, the APRN shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN shall document those efforts in the patient's chart.

3. Obtain and review a KASPER or other prescription drug

monitoring program (PDMP) report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives, the risks, and the benefits of treatment with Buprenorphine to the patient.

5. Obtain written informed consent from the patient for treatment.

6. Discuss and document the patient's treatment with the patient's other providers;

7. If the patient is a female of childbearing potential and age, meet the requirements of paragraph (b) of this subsection; and

8. Develop a treatment plan that incorporates objective behavior modification including counseling or a twelve (12) step program for the duration of the treatment.

(b)1. Prior to initiating treatment, the APRN shall require that the patient first submit to a pregnancy test and the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy.

2. An APRN shall not prescribe Buprenorphine to a patient who is pregnant or breastfeeding unless the APRN first obtains and documents consultation for an opinion as to whether the potential benefit of Buprenorphine use outweighs the potential risk of use.

3. The consultation shall be obtained from a physician or an APRN as established in subsection (3)(a) of this section.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine, the APRN shall comply with the following requirements:

1. The APRN shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the APRN shall conduct the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the APRN shall appropriately document the circumstances in the patient record and shall implement a SAMHSA-recognized or ASAM-recognized home-based induction protocol.

2. The APRN shall document the presence of any opioid withdrawal symptoms before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The APRN shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists and is not improving; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse, the APRN shall:

1. Document the previous history of withdrawal;

2. Educate the patient about the potential for precipitated withdrawal; and

3. Continue maintenance treatment of the patient on the same dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine, the APRN shall prescribe to the patient an amount of Buprenorphine that:

1. Is necessary to minimize craving and opiate withdrawal;

2. Does not produce opiate sedation;

3. Is able only to supply the patient until the next visit, which shall be scheduled as required by this section; and

4. Does not exceed the FDA-approved dosage limit of twenty-four (24) milligrams per day.

(f) The patient's visits shall be scheduled as follows:

1. The APRN shall see the patient at least weekly for the first two (2) months.

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, the APRN shall see the patient at least once monthly thereafter for up to two (2) years.

3. If after two (2) years after initiation of treatment, the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, then the APRN may require that the patient be seen only by the APRN at least once every three (3) months. The APRN shall:

a. Evaluate the patient to determine whether the patient's dosage should be continued or modified; and

b. Appropriately document that evaluation and clinical judgment in the patient's chart.

4. The APRN shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

5. If extenuating circumstances arise that require a patient to unexpectedly reschedule a visit, the APRN shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

(g) The APRN shall review compliance with the recommendations of the treatment plan, including review of KASPER or other PDMP reports and drug screens to help guide the treatment plan at each visit.

1. The APRN shall:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and

b. Accurately document the same in the patient record.

2. Appropriate evaluation may include adjustment of dose strength or frequency of visits, in-creased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

a. At least two (2) of the drug screens shall be random and coupled with a pill count. At least one (1) of those two (2) drug screens shall be confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS).

b. Each drug screen shall, at a minimum, screen for buprenorphine, methadone, oxycodone, other opioids, THC, benzodiazepines, amphetamines, alcohol, and cocaine.

c. If a drug screen indicates the presence of any of the drugs screened, the APRN shall:

(i) Incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment; and

(ii) Document in the patient record.

d. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment.

(h) Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams Buprenorphine generic tablet per day, then the APRN who is not certified in addiction therapy shall:

1. Refer the patient for an evaluation by a physician or an APRN as established in subsection (3)(a) of this section for an opinion as to whether continued treatment and dosage is appropriate; and

2. Document the results of that evaluation in the patient chart.

(i) For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the APRN shall evaluate for and document every twelve (12) months the medical necessity for continued treatment at the established dose.

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which:

1. Shall not provide for the automatic replacement of medication prior to the specified interval date; and

2. If the APRN determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, the APRN shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies and require the patient to provide evidence to the APRN of having so reported.

Section 4. Continuing Education. An APRN who has obtained a waiver and registration as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine for the treatment of Opioid Use Disorder shall complete the one and one-half (1.5) contact hours of continuing education required annually by 201 KAR 20:215, Section 5(1)(b) in addiction disorders.

KELLY JENKINS, President

APPROVED BY AGENCY: December 6, 2018

FILED WITH LRC: December 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2019 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Megan LaFollette, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-7192, fax (502) 429-1248, email Megan.LaFollette@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan LaFollette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.011 and KRS 314.042.

(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 setting standards for prescribing by APRNs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards for prescribing by APRNs.

(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 is necessary to conform to Public Law No. 115-271.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to conform to Public Law No. 115-271.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows additional licensed APRNs to perform the tasks at issue which were previously only allowed to be performed by one category of licensed APRNs.

(d) How the amendment will assist in the effective administration of the statutes: By conforming the state regulation to the federal statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN licensees. There are 8142 APRN licensees 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: They will have to follow the provisions of the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a minor cost to take the examination. The exact cost has not yet been determined.

(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: This regulation does not establish a fee.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)

201 KAR 022:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13), 327.060(3), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate and enforce reasonable administrative regulations regarding certification, limitations of activities, supervision, and educational qualifications for physical therapist assistants. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

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

(1) Complies with the requirements of KRS 327.060(1)(b).

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

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

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

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

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

(b) Shows proof of English Language Proficiency by:

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

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL IBT):

(a) Writing, twenty-two (22);

(b) Speaking, twenty-four (24);

(c) Listening, twenty-one (21);

(d) Reading, twenty-two (22); or

(e) With an overall score of not less than eighty-nine (89); or

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

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 022:135;

(d) Completes the Jurisprudence Exam; and

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 022:020, Section 2(3) and (4) shall be applicable to examination candidates; and

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

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

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth (6th) month, when the required score denoting clinical competency shall have been reached;

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

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

(3) Effective six (6) months after the Board receives an Originating Agency Number from the Federal Bureau of Investigation, submits to the Board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants.

(1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

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

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

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

Section 3. A foreign-educated physical therapist assistant applicant shall be credentialed if the applicant has:

(1) Completed the application process;

(2) Provided written proof that the education institution in which the applicant received his or her education to be a physical therapist assistant is recognized by its own ministry of education;

(3) Provided proof of legal authorization to reside and seek employment in the United States or its territories;

(4) Provided proof of authorization to practice as a physical therapist assistant without limitations in the country where the professional education occurred;

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

(a) Completion of appropriate coursework at a regionally accredited academic institution;

(b) Continuing education in a course approved by the board; or

(c) Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(6) Shows proof of English Language Proficiency by:

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

(b) Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL IBT):

1. Writing, twenty-two (22);

2. Speaking, twenty-four (24);

3. Listening, twenty-one (21);

4. Reading, twenty-two (22); or

5. With an overall score of not less than eighty-nine (89); or

(c) Verification that English is the native language of the country of origin.

(6) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 022:135;

(7) Completes the Jurisprudence Exam; and

(8) Obtains a passing score on the National Physical Therapy

Examination (NPTE).

Section 4[3]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, August 2017".

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

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: November 15, 2018

FILED WITH LRC: December 10, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2019 at 4:00 p.m. E.T. at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2019 at 5:00 p.m. E.T. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors

(1) Provide a brief summary of: What this administrative regulation does:

(a) This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the requirements and procedures for credentialing foreign-educated applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the requirements and procedures for foreign-educated applicants.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides for foreign-educated physical therapist assistants to become certified.

(b) The necessity of the amendment to this administrative regulation: To comply with the provisions of KRS 327.340(13).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides for criteria for foreign-educated physical therapist assistants to be credentialed in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides for criteria for foreign-educated physical therapist assistants to be credentialed in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,600 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Foreign-educated physical therapist assistants will now be able to be credentialed in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants will have to pay normal application fees and costs associated with certification.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Assuming all other criteria for licensure is met, foreign-educated physical therapist assistants will be granted a certificate to practice physical therapy in the Commonwealth of Kentucky.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not change the fees assessed by the Board directly or indirectly. This regulations does not establish any new fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Foreign-educated applicants for physical therapy credentials.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050, 327.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)

201 KAR 022:170. 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 sets forth[~~incorporates by reference~~] the Rules[~~and bylaws~~] adopted by the Physical Therapy Compact Commission.

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.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Physical Therapy Compact Commission Rules", October 2018 [~~June 2018~~]; and
(b) "Physical Therapy Compact Commission Bylaws", October 2018 [~~November 2017~~].
(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.; 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.

SCOTT D. MAJORS, Executive Director
APPROVED BY AGENCY: November 15, 2018
FILED WITH LRC: December 10, 2-18 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2019, at 1:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2019 at 5:00 p.m. (EST). Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the rules for the Physical Therapy Compact Commission.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.300(12).
(c) How this administrative regulation conforms to the content of the authorizing statutes: It promulgates the rules established by the Physical Therapy Compact Commission as administrative regulations pursuant to KRS 327.300(12).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement that any rule adopted by the Physical Therapy Compact Commission receive appropriate oversight.
(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 Physical Therapy Compact Rules more clearly defined full implementation requirements for criminal background checks before member states can issue compact privileges.
(b) The necessity of the amendment to this administrative regulation: The amendment to the Physical Therapy Compact Rules is necessary to comport with the criminal background requirements of KRS 327.300 and 327.310.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the Physical Therapy Compact Rules is necessary to comport with the criminal background requirements of KRS 327.300 and 327.310.
(d) How the amendment will assist in the effective administration of the statutes: The Physical Therapy Compact Rules more clearly defined full implementation requirements for criminal background checks before member states can issue compact privileges.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Physical Therapy.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Physical Therapy will have to fully implement criminal background checks as set forth in the Physical Therapy Compact Commission Rules prior to issuing compact privileges.
(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.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Credentialed physical therapists and physical therapist assistants in Kentucky will be able to participate in the Physical Therapy Compact.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund and funds derived from compact privilege applications from other states.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.
(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Physical Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.300(12).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

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

Section 1. Definitions.

(1) "Asian carp" means:

(a) Bighead carp;

(b) Black carp;

(c) Grass carp; or

(d) Silver carp.

(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp and Scaled Rough Fish Harvest Program; and

(b) Fishing in restricted water.

(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; or

(b) Commercial fishing with gill or trammel nets is prohibited.

(5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish pursuant to 301 KAR 1:060.

(6) "Whip net set" means a gill or trammel net that is set to encircle and harvest Asian carp and scaled rough fish.

Section 2. Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program; and

(2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:

(1) Call the department at 800-858-1549 prior to the requested fishing date and provide the information established in paragraphs (a) through (e) of this subsection:

(a) The participant's name;

(b) The fish buyer's name and phone number;

(c) Date requested;

(d) The location in the restricted water body to be fished; and

(e) The name or location of the boat ramp that will be used;

(2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisherman whose license fee has been waived pursuant to Section 4 of this administrative regulation shall only harvest Asian carp and not retain any by-catch;

(3) Only fish:

(a) On dates approved by the department; and

(b) At a location approved by the department;

(4) Immediately notify the department if the participant changes the:

(a) Fishing location in the restricted water body; or

(b) Boat ramp being used;

(5) Only use a whip net set:

(a) With a minimum bar mesh size of three (3)[~~and one-quarter (3.25)~~] inches;

(b) That is always tended by a program participant when set less than three (3) feet below the surface of the water;

(c) That is not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and

(d) That is not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;

(6) Complete and submit to the department a Daily Harvest and Release Summary Card immediately after each day's fishing;

(7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 of this administrative regulation;

(8) Immediately release all by-catch;

(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the requirements of 301 KAR 1:155; and

(10) Be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 003:022, shall be waived for a commercial fisherman who only harvests Asian carp in restricted waters.

Section 5. Department Requirements.

(1) The department shall:

(a) Maintain a list of program participants and their contact information, which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly; and

(b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.

(2) The department shall approve a qualified fishing request by assigning:

(a) A fishing location and boat ramp to a program participant, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and

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

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

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

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

(c) A requested date falls on:

1. Memorial Day;

2. Labor Day;

3. July 4; or

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

Section 6. Program Disqualification.

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

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

Section 7. Incorporation by Reference.

(1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 19, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2018 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through January 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

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

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

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

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Harvest Program to now use gill and trammel nets with mesh size of 3 inches instead of 3.25 inches.

(b) The necessity of the amendment to this administrative regulation: There are currently a large number of Asian carp that are intermediate in size (3-6 pounds) that are not as susceptible to larger mesh gill and trammel nets. By allowing commercial fishermen to use 3-inch gill and trammel nets, they can effectively sample these smaller fish and sell them in potentially substantial markets. This will increase the overall removal of Asian carp from Kentucky's waters and also prevent many of these smaller fish from reproducing, as they are not sexually mature at this time.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect any commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Harvest Program. By promoting increased catch of Asian carp, this should increase the number of fishermen targeting these fish.

(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: Commercial fishermen fishing under the Asian Carp Harvest Program will now be allowed to use 3-inch mesh gill nets.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen should be able to harvest and sell more Asian carp which will benefit them economically.

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

(a) Initially: There will be minimal cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be minimal continual cost to the Department.

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

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

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

(9) TIERING: Is tiering applied? No. All commercial fishermen fishing under the Asian Carp and Scaled Rough Fish Harvest Program must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement Division will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how much revenue this administrative regulation will directly generate for the first year, but it is assumed the number of Asian carp removed and sold will increase.

(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 increased removal and sale of Asian carp in the future as a result of this administrative regulation should positively influence local revenue. However, the exact amount is unknown.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.445, 150.450(2), (3), 150.990, 217.015(20)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), 50 C.F.R. 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R.[~~Part~~] 17 protects the shovelnose sturgeon from harvest because of similarity of appearance with the endangered pallid sturgeon. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

Section 1. Definitions.

(1) "Buyer's permit" means a Commercial Roe-bearing Fish Buyer's Permit.

(2) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(3) "Harvester permit" means a Commercial Roe-bearing Fish Harvester's Permit.

(4) "Immediate family member" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.

(5) "Ohio River Trophy Catfish Harvest Permit" means a permit that allows a commercial fisherman to harvest trophy catfish[~~participate in a special catfish harvest program downstream of Cannelton Lock and Dam in the Ohio River and its tributaries open to commercial fishing~~].

(6) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(7) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(8) "Roe-bearing Fish Buyer's Permit" means a permit issued by the department that entitles the permit holder[~~permittee~~] to buy roe-bearing species or roe in accordance with this administrative regulation.

(9) "Roe-bearing Fish Harvester's Permit" means a permit issued by the department to a licensed commercial fisherman that entitles the permit holder to harvest and sell roe-bearing species in accordance with this administrative regulation.

(10) "Sport fish" means those species established in 301 KAR 1:060.

(11) "Trophy catfish" means, for the area downstream of Cannelton Lock and Dam in the Ohio River and its tributaries open to commercial fishing, a:

(a) Blue or flathead catfish that is a minimum of forty (40) inches in length; or

(b) Channel catfish that is a minimum of thirty (30) inches in length.

(12) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(13) "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food processing plant prior to its sale at a roe-bearing fish buyer's facility.

Section 2. Nonresident Commercial Fishing Licenses. A nonresident commercial fishing license shall only be issued to residents of states that offer nonresident fishing licenses to Kentucky residents, except that a nonresident with a valid 2013 Kentucky nonresident commercial fishing license shall be eligible to purchase a nonresident fishing license in subsequent license years, unless the nonresident fails to purchase the permit during any license year.

Section 3. Unlicensed Helpers.

(1) A commercial fisherman shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A commercial fisherman shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed commercial fisherman while using commercial fishing gear; and

(b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisherman with a Fish Transportation Permit as established in 301 KAR 1:125.

(4) A commercial fisherman whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:

(a) Be listed as a helper by a licensed Kentucky commercial fisherman; or

(b) Assist a licensed Kentucky commercial fisherman in harvesting or transporting fish.

Section 4. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear pursuant to 301 KAR 1:146;

(2) Not use commercial fishing gear within:

(a)1. Fifty (50) yards of the outlet or inlet of an overflow lake; or

2. Fifty (50) yards of the mouth of a stream, except the mouth of the Ohio River; and

(b) 200 yards of a dam, as established in KRS 150.445;

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; or

(b) Within[~~a distance of~~] 200 yards from the mouth of bays or

inlets in Kentucky or Barkley Lakes; and

(4) Call the department at 800-858-1549 within twenty-four (24) hours if any commercial gear is:

(a) Lost;

(b) Stolen; or

(c) Irretrievable due to unforeseen circumstances.

Section 5. Special Catfish Harvest Restrictions.

(1) In the Ohio River and its tributaries open to commercial fishing, there shall be:

(a) An unlimited harvest of:

1. Blue and flathead catfish that are less than thirty-five (35) inches in length; and

2. Channel catfish that are less than twenty-eight (28) inches in length; and

(b) A daily limit of one (1):

1. Blue and flathead catfish greater than or equal to thirty-five (35) inches in length; and

2. Channel catfish greater than or equal to twenty-eight (28) inches in length.

(2) A person with a valid commercial license shall obtain from the department a free Ohio River Trophy Catfish Harvest Permit in order to harvest multiple trophy catfish downstream of Cannelton Lock and Dam.

(a) The department shall issue a maximum of fifteen (15)[~~fifty (50)~~] permits annually.

(b)[~~Beginning in 2015,~~] The department shall issue a permit to a commercial fisherman who:

1. Has reported a minimum harvest of 10,000 pounds of catfish from the Ohio River and its tributaries open to commercial fishing in at least two (2) of the last three (3) years; and

2. Sends a written request to the department postmarked on or before March 10.

(c) A commercial fisherman may retain the rights to the permit each year, provided the requirements established in paragraph (2)(b) of this subsection are met.

(d) Each permit shall be issued in the order established in subparagraph 1. through 3. of this paragraph.

1. Retained permit requests;

2. A random electronic drawing for the remaining permit requests that are postmarked by March 10 of each year; and

3. First-come, first-served for any remaining permits.

(e) There shall be an unlimited daily harvest of catfish less than trophy size for each permit holder.

(f)[~~(d)~~] There shall be a daily creel[~~harvest~~] limit of four (4) trophy catfish in aggregate for each permit holder.

(3) An Ohio River Trophy Catfish Permit holder shall not possess more than one (1) daily creel limit of trophy catfish while on the water or trailering on a boat ramp.

(4) There shall be a maximum of two (2) daily creel limits of trophy catfish possessed per boat while on the water or when trailering on a boat ramp if there is more than one (1) Ohio River Trophy Catfish Permit holder in the boat.

(5) While on the water or trailering on a boat ramp, a commercial fisherman who does not possess an Ohio River Trophy Catfish Permit shall not possess more than one (1) daily creel limit of:

(a) Flathead catfish greater than or equal to thirty-five (35) inches;

(b) Blue catfish greater than or equal to thirty-five (35) inches; or

(c) Channel catfish greater than or equal to twenty-eight (28) inches.

(6) While on the water or trailering on a boat ramp, multiple commercial fishermen per boat who do not possess an Ohio River Trophy Catfish Permit shall not possess more than two (2) daily limits of:

(a) Flathead catfish greater than or equal to thirty-five (35) inches;

(b) Blue catfish greater than or equal to thirty-five (35) inches; or

(c) Channel catfish greater than or equal to twenty-eight (28) inches.[~~(e) Beginning in 2015, if fifty (50) permits are not issued by March 15, then the department shall conduct a random electronic lottery drawing for the remaining slots.~~

~~(f) A commercial fisherman shall apply for the lottery established in paragraph (e) of this subsection by sending a written request to the department to be entered in the lottery postmarked on or before March 10.~~

~~(g) If the number of applicants for any lottery is less than the number of available permits, then the remaining permits shall be distributed on a first-come, first-served basis.~~]

Section 6. Harvester Permit.

(1) In order to retain his or her permit privilege, a harvester permit holder shall submit to the department postmarked by September 15:

(a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and

(b) The permit fee as established in 301 KAR 003:022.

(2) Prior to being issued a harvester permit, a person shall possess a valid commercial fishing license.

(3) A harvester permit shall not be sold to a resident of a state that will not sell a nonresident harvester permit, or its equivalent, to Kentucky residents.

(4) The maximum number of resident harvester permits available each year shall be 101.

(5) The maximum number of nonresident harvester permits available each year shall be eighteen (18).

(6) A harvester permit holder shall be eligible to transfer permit privileges to an:

(a)[~~An~~] Immediate family member; or

(b)[~~An~~] Unlicensed helper who:

1. Has been employed by the permit holder for a period of at least one (1) year in that capacity; and

2. Complies with the requirements of this administrative regulation.

(7) To transfer a permit, the permit holder shall send to the department:

(a) A notarized letter documenting the name and relationship of the permit recipient; and

(b) If an unlicensed helper, proof of employment of the unlicensed helper for a period of one (1) year.

(8) Transferability shall be voided if a commercial fishing license or harvester permit is revoked or suspended as established in Section 14 of this administrative regulation.

Section 7. Harvester Permit Lottery.

(1) There shall be a lottery for the unfilled harvester permits below the quota.

(2) A person shall apply for the lottery by submitting the following to the department by September 15:

(a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and

(b) The appropriate permit fee as established in 301 KAR 003:022.

(3) A mailed Application for Commercial Roe-bearing Fish Harvester's Permit shall be postmarked by September 15 to be eligible.

(4) A person chosen in the lottery shall first obtain a commercial fishing license prior to obtaining a harvester permit.

(5) The department shall return all permit fees to those not chosen in the lottery.

(6) If the department receives fewer resident or nonresident Applications for Commercial Roe-bearing Fish Harvester's Permits than the number of available harvester permits, then completed Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 shall be issued in the order they were received until the quota has been reached.

(7) If the number of Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 exceeds the number of harvester permits available, then a second lottery shall be held to determine the recipients of the available permits.

Section 8. Harvester Permit Requirements.

(1) A harvester permit shall be required for a licensed

commercial fisherman to harvest, transport, or sell roe fish or unprocessed roe.

(2) A permit shall not be required for a special commercial fishing permit holder to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.

(3) A harvester permit shall not be issued unless all applicable reports have been completed and submitted to the department, pursuant to Section 14 of this administrative regulation.

(4) A harvester permit holder shall:

(a) Have the permit in possession while:

1. Fishing for roe-bearing fish; and

2. Transporting or selling roe-bearing fish or unprocessed roe;

(b) Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 9 of this administrative regulation; and

(c) Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer.

Section 9. Buyer's Permit Requirements.

(1) A buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.

(2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with the appropriate permit fee to the department, as established in 301 KAR 003:022.

(3) A buyer's permit holder shall:

(a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;

(b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;

(c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing fish harvesters in Kentucky;

(d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing fish harvesters in another state including:

1. Name, address, and telephone number of the seller;

2. License number of the seller; and

3. Number of pounds of unprocessed roe purchased;

(e) Sign the harvester permit holder's Daily Roe-bearing Fish Harvester's Transaction Report for each transaction prior to purchasing or receiving unprocessed roe from the harvester;

(f) Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permit holder for a period of three (3) years; and

(g) Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours.

Section 10. Commercial Fishing Season and Size Limits.

(1) The commercial fishing season shall be open year-round in the waters listed in 301 KAR 1:150, except for:

(a) Kentucky and Barkley lakes as established in 301 KAR 1:140;

(b) The shovelnose sturgeon season, which shall extend from October 15 through May 15 in the Ohio River Basin only; and

(c) The paddlefish season, which shall extend from:

1. November 1 through April 30 in all waters open to commercial fishing, except Barkley and Kentucky Lakes, as established in 301 KAR 1:140; and

2. November 1 through May 31 for commercial trotlines in all waters open to commercial fishing, except the Ohio and Mississippi Rivers.

(2) There shall not be a size limit on any commercially-harvested rough fish, except that a commercial fisherman shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of the snout to the fork of the tail fin;

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except in Kentucky and Barkley lakes as established in 301 KAR 1:140; and

(c) Blue catfish, flathead catfish, and channel catfish as established in Section 5 of this administrative regulation, and measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(3) A harvester or buyer permit holder shall not possess:

(a) Unprocessed paddlefish roe after June 5; or

(b) Unprocessed shovelnose sturgeon roe after May 20.

Section 11. Species Ineligible for Commercial Harvest.

(1) A commercial fisherman shall not harvest, and shall immediately release the following species:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon, a federally endangered species;

(c) Lake sturgeon;

(d) Shovelnose sturgeon caught in the Mississippi River;

(e) All turtle species;

(f) All mussel species except Asiatic clams (Genus Corbicula); and

(g) Alligator gar.

(2) A licensed commercial fisherman shall only sell roe-bearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods as established in [~~and permitted by~~] 301 KAR 1:146.

Section 12. Tending Gear and Removing Fish. A commercial fisherman shall:

(1) Tend and remove the fish from:

(a) Hoop nets or slat traps at least once every seventy-two (72) hours; and

(b) Other commercial fishing gear at least once every twenty-four (24) hours;

(2) Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and

(3) Remove commercial fishing gear from the water when finished fishing.

Section 13. Roe Fish Egg Checking Methodology. A commercial fisherman shall use a ten (10) gauge or smaller needle to examine roe fish for the presence of eggs.

Section 14. Reporting, License and Permit Suspension, Renewal, and Revocation.

(1) Every licensed commercial fisherman shall submit a completed Monthly Report of Commercial Fish Harvest in Kentucky by the tenth day of every month for the previous month's harvest, even if no harvest occurred.

(2) A harvester permit holder shall:

(a) Complete a Daily Roe-bearing Fish Harvester's Transaction Report for each day of the month that roe-bearing fish are harvested or sold to a Kentucky permitted buyer; and

(b) Submit to the department all completed daily reports within a calendar month by the tenth day of the following month, in addition to the reporting requirements established in subsection (1) of this section.

(3) If a buyer's permit holder completes any transactions in a given month, the permit holder shall submit to the department a completed Monthly Commercial Roe-bearing Fish Buyer's Report by the tenth day of the following month.

(4) A report that is being mailed to the department shall be postmarked on or before the tenth of the month pursuant to subsections (1) through (3) of this section.

(5) The department shall issue a courtesy reminder letter to a holder of a commercial fishing license, harvester permit, or buyer's permit who has failed to submit to the department a monthly report by the deadlines established in subsections (1) through (4) of this section.

(6) The department shall issue a warning letter to a license or permit holder who has twice failed to meet the reporting deadlines established in subsections (1) through (4) of this section during any given commercial fishing license year.

(7) The department shall suspend the commercial fishing license of a license or permit holder who has failed to meet reporting deadlines for three (3) or more months in a given license year until the license or permit holder submits to the department all required reports.

(8) The department shall suspend for a period of three (3) months the commercial fishing license of a license holder who has not met the reporting deadlines established in this section for four (4) or more times in a license year.

(9) If a three (3) month suspension extends into a new license year, subsequent delinquent reports shall result in additional three (3) month suspensions.

(10) The department shall not renew a commercial fishing license, harvester permit, or buyer's permit for a person who has not satisfied the reporting requirements of this administrative regulation.

(11) The department shall revoke the commercial fishing license, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear, pursuant to 301 KAR 1:146;

(b) Knowingly placing commercial fishing gear in a restricted area, pursuant to Section 4(2) and (3) of this administrative regulation;

(c) Harvesting prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing, pursuant to 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(12) The department shall revoke a buyer's permit, for a period of two (2) years, of a person:

(a) Convicted of a federal commercial fishing violation; or

(b) Who falsified data on a Monthly Commercial Roe-bearing Fish Buyer's Report.

(13) A person may request an administrative hearing pursuant to KRS Chapter 13B if a permit has been:

(a) Denied;

(b) Suspended;

(c) Not renewed; or

(d) Revoked.

Section 15. Boundaries. The department shall make available on its Web site at fw.ky.gov the Global Positioning System coordinates detailing the Kentucky and Ohio border on the Ohio River, for download to personal devices.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Commercial Roe-bearing Fish Harvester's Permit", 2008 edition;

(b) "Application for Commercial Roe-bearing Fish Buyer's Permit", 2008 edition;

(c) "Daily Roe-bearing Fish Harvester's Transaction Report", 2008 edition;

(d) "Monthly Commercial Roe-Bearing Fish Buyer's Report", 2008 edition;

(e) "Monthly Report of Commercial Fish Harvest in Kentucky", 2019 edition[~~2014~~]; and

(f) "List of GPS coordinates for Ohio River Boundary with Ohio", 2008 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, 8:00 a.m. to 4:30 p.m.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: December 13, 2018

FILED WITH LRC: December 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through January 31, 2019. 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 commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage rough fish populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. 17 protects the shovelnose sturgeon from harvest in the Mississippi River because of similarity of appearance with the federally protected pallid sturgeon.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of the statutes and federal regulation by defining the requirements for commercial fishing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will reduce the number of Ohio River Trophy Catfish Harvest Permits from 50 to 15. Currently there are only 8 commercial fishermen using the free permits. For commercial fishermen with an Ohio River Trophy Catfish Harvest Permit, this amendment will limit a commercial fishing boat to one daily limit of trophy catfish per commercial fisherman while on the water or when trailering the boat on a boat ramp. In addition, there shall be a maximum of two daily limits of trophy catfish allowed per commercial fishing boat when multiple commercial fishermen are on board. For commercial fishermen without an Ohio River Trophy Catfish Harvest Permit, this amendment will limit a commercial fishing boat to one daily limit of flathead and blue catfish greater than or equal to 35 inches and channel catfish greater than or equal to 28 inches per commercial fisherman while on the water or when trailering the boat on a boat ramp. In addition, there shall be a maximum of two (2) daily limits of flathead and blue catfish greater than or equal to 35 inches and channel catfish greater than or equal to 28 inches allowed per commercial fishing boat when multiple commercial fishermen are on board. The Monthly Report of Commercial Fish Harvest in Kentucky (incorporated by reference) was modified to remove a harvest method that was not valid for commercial fishing and several other minor errors on the form were corrected.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to better protect

overharvest of large catfish on the Ohio River and will allow the department's law enforcement officers to better assess commercial fishing violations.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: This amendment will affect all commercial fishermen who fish the Ohio River and its tributaries open to commercial fishing for trophy or other large catfish. Currently there are approximately 50 fishermen actively commercial fishing for trophy or other large catfish.

(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: Commercial fishermen fishing the Ohio River and its tributaries open to commercial fishing will have to follow the per boat, catfish daily creel limit restrictions. Only fifteen commercial fishermen will now be able to obtain a free Ohio River Trophy Catfish Harvest Permit. Currently there are only eight commercial fishermen using these permits.

(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 associated with complying with this administrative regulation amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The per-boat, daily limit restrictions will remove any ambiguity as to whether fish held by commercial fishermen on their boat are legally possessed. The reduction in free Ohio River Trophy Catfish Harvest Permits will neither be a benefit nor detriment to commercial fishermen.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied to this regulation because all commercial fishermen must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R 17 protects the shovelnose sturgeon from harvest in the Mississippi River because of similarity of appearance with the federally protected pallid sturgeon.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amendment)

505 KAR 1:100. Department of Juvenile Justice Policies and Procedures: Admissions.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) The "Department of Juvenile Justice Policy and Procedures[~~Manual~~]: Admissions", November 30, 2018[~~October 15, 2015~~], which includes the following:

200 Definitions (Amended 11/30/18[~~10/15/15~~]);
201[~~200.1~~] Classification (Amended 11/30/18[~~10/15/15~~]);
[~~201 Day Treatment Admissions (Added 10/15/15);~~]
202 Youth Placement Priority (Amended 11/30/18[~~7/01/15~~]);
203[~~204~~] Daily Census and Population (Amended 11/30/18[~~7/01/15~~]);
204[~~206~~] Administrative Transfers (Amended 11/30/18[~~10/15/15~~]);
205[~~208~~] Youth Rights (Amended 11/30/18[~~7/01/15~~]);
206[~~209~~] Youth Access to Outside Investigative Agencies (Amended 11/30/18[~~7/01/15~~]); and
207 Out-of-State Placement (Amended 11/30/18);
[~~210 Interstate Referrals (Amended 7/01/15);~~
~~211 Interstate Runaways, Escapees and Absconders (Amended 7/01/15);~~
~~212 Interstate Purchase of Care (Amended 7/01/15);~~

~~213 Interstate Travel (Amended 7/01/15);~~
~~214 Interstate Revocations and Case Closure (Amended 7/01/15); and~~
~~217 Advanced Care Unit Admissions and Release (Amended 7/01/15)~~]; and

(b) The "Classification and Placement Manual", Amended 11/30/18[~~10/15/15~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: November 29, 2018

FILED WITH LRC: November 30, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time, at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. The hearing is open to the public. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the classification and placement of juveniles committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.0652 and 15A.069.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the management, policy and coordination of all matters relating to the classification, evaluation, and placement of juvenile committed to or detained by the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential programs as to the classification, placement, and transportation of youth.

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

(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile Justice into compliance to reflect actual practice and procedure of the agency. Policy and procedures for Department operated day treatment programs and interstate compact youth shall each be removed and incorporated by reference into a respective New Administrative Regulation being filed by the Department in conjunction with this Amended Regulation.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.0652 and 15A.069 and provide clarification to the Department of Juvenile Justice Classification and Placement Services protocol that have been developed by the Department

(c) How the amendment conforms to the content of the authorizing statues: The amendments establish and amend practices and procedures relating to the classification, evaluations, and placement of juveniles committed to the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statues: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential programs as to the classification, placement, and transportation of youth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,400 employees of the Department in community and residential settings, approximately 2,000 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice facilities.

(4) Provide analysis of how the entities identified in question (3) will be impacted by 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: Community staff will administer a risk and needs assessment on all adjudicated youth, residential staff and the community will have a clear understanding of the classification and placement of youth in the least restrictive placement based on their treatment needs and level risk to reoffend which is commensurate with the severity of the committing offense.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No monetary cost will be incurred by the youth, employees, or volunteers of the Department of Juvenile Justice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To ensure youth are placed in the least restrictive placement based on their assessed risk and treatment needs, and to provide a clearer understanding of the policies and procedures by employees and residents regarding the classification, placement, and timeframes for commitment and out of home treatment. The benefit to the revised classification and placement is to reduce the length of stay in out of home placements for youth, reduce the costs of out of home placements by the Department, and reduce recidivism by returning lower level offending youth to the community sooner.

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

(a) Initially: No additional cost is projected.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Funds and Restricted Funds if necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Response:

Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), 15A.0652, 15A.0654, 15A.067, 15A.069, 600.040, 605.080, 605.090, 605.095, 605.100, 605.110, 605.150, 610.100, 635.095, 635.100, 635.060, 635.520, 640.120, 645.250

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Response: None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Response: None

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

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

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:

TRANSPORTATION CABINET
Department of Highways
Division of Contract Procurement
(Amendment)

603 KAR 2:015. Prequalification for construction,[;] certificate of eligibility,[;] and contract claims dispute.

RELATES TO: KRS 13B, 45A.245, 61.878(1)(c), 176.090-176.110, 176.130-176.220

STATUTORY AUTHORITY: KRS 174.080, 176.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.140 requires the cabinet to establish administrative regulations in order[authorizes the Department of Highways] to determine the eligibility of bidders for construction contracts with the Department of Highways. This administrative regulation establishes the requirements for an applicant to obtain a certificate of eligibility with the cabinet[is promulgated to provide a method by which the determination shall be made]. This administrative regulation also establishes the hearing procedures for a contract claims dispute[and denial, revocation, or limitation of certification].

Section 1. Definitions.

(1) "Cabinet" means the Transportation Cabinet.

(2) "Contract" means a competitively bid contract between the contractor and the department pursuant to KRS Chapter 45A and 176.090 through 176.110.

(3) "Contractor" means the person, corporation, partnership, or joint venture that enters into a contract with the department for highway maintenance or construction.

(4) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work authorized at one (1) time.

Section 2. Certificate of Eligibility.

(1) (a) A contractor bidding on a construction or maintenance project, or accepting a subcontract on a construction or maintenance project of the department, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.

(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor shall be qualified.

1. The department may waive the requirements established in subsection (1)(a) and (b) on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the requirement is not mandated by KRS 176.130.

2. The waiver shall be included in the notice to contractors and the bid proposal for the project.

(2) The Commissioner of Highways shall appoint a Construction Prequalification Committee composed of department employees to review each application and make a recommendation to the State Highway Engineer concerning the eligibility of a contractor to bid on a department construction or maintenance contract.

Section 3. Application for Certificate of Eligibility.

(1) A contractor desiring to procure a certificate shall submit a completed Application for Certificate of Eligibility, TC 14-1, to the Division of Construction Procurement. The applicant shall provide:

(a) Information regarding the applicant's ability to perform the types of work for which eligibility is requested;

(b) Construction experience resumes of the applicant's principal officers and key personnel;

(c) A description of the applicant's plant and equipment;

(d) Financial statements prepared as of the close of the previous fiscal year for an established company, or to reflect the current financial status of a newly established contractor applicant; and

(e) A certificate of authority if required by KRS 176.150(4).

(2) (a) An applicant desiring eligibility in excess of $1,000,000 shall submit financial statements presented in accordance with generally accepted accounting principles and audited by a certified public accounting firm.

(b) The audit shall be performed in accordance with generally accepted auditing standards promulgated by the American Institute of Certified Public Accounts and include procedures specifically applicable to the construction industry.

(c) The applicant's financial statements shall include supplemental financial information if requested by the department.

(d) The financial statements for an applicant desiring eligibility of $1,000,000 or less shall be accompanied by a review report issued by a certified public accounting firm or a compilation report or balance sheet issued by a certified public accounting firm or an accountant.

(3) (a) Pursuant to KRS 61.878(1)(c), the department shall not make the application information required in this section available to the public.

(b) Pursuant to KRS 176.210, the department may make lists of qualified bidders public.

Section 4. Method of Computing Maximum Eligibility Amount.

(1) (a) The allowable current net assets as determined from the financial statements, plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary, excluding policies with other beneficiaries, shall be multiplied by a factor of twelve (12) to establish the net current assets factor.

(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.

(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.

(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment, and prior construction performance in accordance with the maximum percentages established in paragraphs (a) through (c) of this subsection.

(a) Organization and experience shall be twenty (20) percent.

(b) Plant and equipment shall be thirty (30) percent.

(c) Performance shall be fifty (50) percent.

(3) (a) The maximum eligibility amount shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor. The maximum capacity factor shall not exceed $1,000,000 if unaudited financials have been submitted.

(b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department, and the total value of uncompleted prime contract work charged to the contractor regardless of the location and with whom the contractor may be contracted.

Section 5. Issuance of Certificate of Eligibility.

(1) (a) The Construction Prequalification Committee shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.

(b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) calendar days after receipt of the application unless the application is deferred as established in Section 6(3) of this administrative regulation.

(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating the contractor's intent to bid on a specific federal-aid project that has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.

(2) A certificate of eligibility shall terminate 120 calendar days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time.

(a) An applicant shall file a new application pursuant to Section 3 of this administrative regulation within ninety (90) calendar days after the end of the applicant's fiscal year.

(b) The department shall review the application and approve or disapprove the issuance of a new certificate of eligibility within thirty (30) calendar days of the date of receipt by the department.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

(4) An applicant may, in regard to the department's decision on its application:

(a) Request reconsideration of the department's decision pursuant to Section 6 of this administrative regulation; or

(b) Appeal the department's decision pursuant to Section 9 of this administrative regulation.

Section 6. Reconsideration of Decisions.

(1) (a) 1. An applicant may request reconsideration of a decision of the Construction Prequalification Committee if the applicant is denied a certificate of eligibility or disagrees with the maximum eligibility amount or the types of work established in its certificate of eligibility.

2. An applicant may request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(b) A request for reconsideration shall be submitted in writing to the department within ten (10) calendar days of the applicant's receipt of the notice of the department's action.

(c) A request for reconsideration shall state the basis of the request and be supported by information and evidence that indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.

(d) The Construction Prequalification Committee shall review the request and may contact the applicant for clarification or expansion of the submitted information. The committee shall make a recommendation to the State Highway Engineer.

(e) The Department of Highways shall notify the applicant of the determination within thirty (30) calendar days after receipt of the request for reconsideration.

(f) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his or her right to an administrative hearing pursuant to Section 9 of this administrative regulation.

(2) (a) An applicant denied a certificate of eligibility may submit a new application for reconsideration.

(b) The department shall consider the new application and notify the applicant of the action taken within thirty (30) calendar days after receipt of the application.

(3) (a) An application that has been deferred by the department until the applicant settles an outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the reason for deferral is resolved.

(b) 1. An applicant shall be notified of a deferral within ten (10) calendar days after action is taken by the department to defer the application.

2. The applicant shall be notified of his or her right to an administrative hearing regarding the deferral.

(4) (a) An interim application may be submitted if there has been a substantial increase in the net current assets of the applicant and the applicant wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility.

(b) The interim application shall contain a financial statement certified in the same manner as the statements submitted by the applicant at the close of the previous fiscal year.

(c) The department shall review the interim application and notify the applicant of the department's determination within thirty (30) calendar days after receipt of the application.

(5) (a) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement or current information relating to the applicant's organization, equipment, and work status.

(b) The information requested shall be submitted within thirty (30) calendar days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.

(6) An applicant may request an administrative hearing if the applicant is denied a certificate of eligibility, the application is deferred, or the applicant disagrees with the maximum eligibility amount or the types of work listed in the certificate of eligibility.

(7) To request an administrative hearing, an applicant shall notify the department in writing within ten (10) calendar days after receipt of the denial or certificate of eligibility.

Section 7. Revocation.

(1) Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily by failure to comply with the laws, administrative regulations, or specifications applicable to a contract or subcontract, the department shall take action to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(2) A notice to the certificate holder stating the grounds on which the action is proposed, shall be sent by certified mail.

(3) A request for reconsideration pursuant to Section 6 of this administrative regulation, or a request for an administrative hearing, shall be submitted by the certificate holder in writing within ten (10) calendar days of the receipt of notice of a decision by the cabinet. If a written request is not received within ten (10) calendar days, the proposed action shall become final.

Section 8. Administrative Claims Process.

(1) The cabinet shall not consider a claim for extra work as established in the edition of the Standard Specifications for Road and Bridge Construction applicable to the contract between the cabinet and the contractor unless the contractor has submitted a completed Notice of Potential Claim, TC 63-77, to the engineer before beginning the disputed work.

(2) A notice of claim against the cabinet for delay shall be submitted in writing to the engineer on a completed Notice of Potential Claim, TC 63-77 within ten (10) calendar days of the date the contractor knew or should have known of the existence of the claim as based on daily records, contractor records, or applicable correspondence. A notice of claim presented to the cabinet by the contractor after ten (10) calendar days shall not be considered for payment by the cabinet.

(3) After receipt of Notice of Potential Claim, TC 63-77, the cabinet shall respond to the

contractor with Acknowledgement of Notice of Potential Claim, TC 63-78.

(4) For claims involving extra work, the contractor shall submit to the engineer a summary of the force account forms that identify each operation affected, and the specific locations where work is affected, no later than fourteen (14) calendar days after filing the Notice of Potential Claim TC 63-77, and on a weekly basis thereafter.

(5) If the contractor's records indicate costs that are greater than those on record with the cabinet, the engineer shall notify the contractor in writing.

(a) A contractor shall respond to the engineer within three (3) working days if he or she disagrees with the findings of the engineer.

(b) If the contractor fails to respond, the records of the cabinet shall control.

(6) For claims involving delay, the contractor shall submit the following in writing no later then fourteen (14) calendar days after filing the Notice of Potential Claim, TC 63-77, and on a weekly basis thereafter:

(a) Information regarding the potential effect to the schedule caused by the delay;

(b) Identification of the operations that have been, or will be delayed;

(c) The possible mitigating actions and the additional costs or time to implement the mitigating actions;

(d) An explanation of how the department's act or omission delayed the operation, and an estimation of the amount of time necessary to complete the project; and

(e) An itemization of the extra costs incurred including:

1. How the extra costs relate to the delay, and how they were calculated and measured;

2. An identification of the project employees for whom the costs are being compiled; and

3. An identification of the contractor's equipment by manufacturer and the numbers of the items of equipment for which costs have been compiled.

(7) A contractor may request additional time or a different submittal schedule, such as biweekly or monthly, by submitting a written request to the engineer. Approval or denial of the request shall be issued by the engineer within seven (7) calendar days of receipt of the request.

(8) (a) If the contractor submits the claim to the engineer, the engineer, in consultation with the district transportation engineering branch manager, shall attempt to resolve the dispute with the contractor within sixty (60) calendar days of the date of receipt of the submitted claim from the contractor

(b) If the claim is not resolved by the engineer, then the claim shall be submitted to the director, Division of Construction, who shall have ninety (90) calendar days from the date of submission to make the final determination.

(c) If the matter is not resolved by the engineer and the contractor and prior to making a final determination on the matter, the director, Division of Construction shall convene an informal settlement conference with the contractor for the purpose of either settling the dispute or identifying the issues that need resolution. If the settlement conference is unsuccessful, the director, Division of Construction, shall notify the contractor in writing of the cabinet's decision regarding the contractor's claim.

(d) If the engineer or the director, Division of Construction, fails to render a decision within the time limits established in this section, the inaction shall be deemed a denial of the claim by the cabinet, and the contractor may proceed with the administrative hearing process pursuant to Section 9 of this administrative regulation. If a decision is not rendered within the time limits established in subsection (7)(a) and (b) of this section, the cabinet shall bear all costs associated with the hearing officer.

(9) The contractor shall request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) calendar days of the date of the notification of the decision by the cabinet.

(10) Upon the agreement in writing of both parties, the parties may engage in formal nonbinding mediation of the dispute with a mediator agreeable to both parties. The parties participating in the mediation shall each pay one-half (1/2) of the costs associated with the mediator.

(11) If mediation is agreed upon by the parties, all time limits related to the continuing administrative process shall be stayed until either the cabinet or the contractor submits written notice to the other that they are terminating the mediation process. The time limits previously stayed shall commence to run upon the date of the written notice.

Section 9. Hearing Procedure.

(1) A request for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the Kentucky Transportation Cabinet, State Highway Engineer, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622.

(2) A written request for an administrative hearing shall be submitted to the State Highway Engineer within thirty (30) calendar days of the date of the decision by the director, Division of Construction.

(3) A request for an administrative hearing that is not submitted timely to the cabinet shall be denied, and the decision by the director, Division of Construction, shall stand.

(4) The secretary of the Transportation Cabinet, after receiving the report and recommendation of the hearing examiner, may accept the report and recommendation in its entirety, or reject or modify the findings and recommendations of the hearing examiner as established in a final order pursuant to KRS Chapter 13B.

(5) The contractor shall be notified by final order of the secretary's decision.

(6) The contractor shall have appeal rights pursuant to KRS Chapter 13B.

(7) The contractor shall reimburse the cabinet one-half (1/2) of the expenses of the hearing officer within thirty (30) calendar days after the date of the entry of the final order by the Secretary of Transportation. If a contractor fails to pay its portion of the hearing officer expenses, the cabinet shall withhold an amount due to the contractor from a current or future project.

(8) Pursuant to KRS 45A.245, a contractor may forego the KRS Chapter 13B hearing and file a lawsuit in Frankfort, Kentucky in the Franklin County Circuit Court.

Section 10. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Certificate of Eligibility", TC 14-1, February, 2017;

(b) "Notice of Potential Claim", TC 63-77, November, 2018;

(c) "Acknowledgement of Notice of Potential Claim", TC 63-78, November, 2018;

(d) "Standard Specifications for Road and Bridge Construction", March 1, 2004;

(e) "Standard Specification for Road and Bridge Construction", December 14, 2008;

(f) "Standard Specification for Road and Bridge Construction", June 15, 2012;

(g) "Standard Specifications for Road and Bridge Construction, January 1, 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet, Department of Highways, Division of Construction Procurement, 200 Mero Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564-3500.

(3) This material may also be found on the cabinet's website at https://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx.[~~"Commissioner" means the Commissioner of Highways.~~

~~(2) "Cabinet" means the Transportation Cabinet.~~

~~(3) "Department" means the Department of Highways.~~

~~(4) "Division" means the Division of Construction.~~

~~(5) "Concurrence" means the agreement with the entire report and recommendation of the hearing examiner.~~

~~(6) "Dissent" means disagreement with a part or portions of the report and recommendation of the hearing examiner.~~

~~(7) "Contract" means a competitively bid contract between the contractor and the department pursuant to KRS Chapter 45A and 176.090 to 176.110.~~

~~(8) "Contractor" means the person, corporation, partnership or joint venture which enters into a contract with the department for highway maintenance or construction.~~

~~(9) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work permitted at any one (1) time.~~

~~Section 2. Certificate of Eligibility. (1)(a) A contractor bidding on a construction or maintenance project or accepting a subcontract on a construction or maintenance project of the Transportation Cabinet, Department of Highways, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction projects.~~

~~(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor is qualified.~~

~~(c) The department may waive this requirement on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the requirement is not mandated by KRS 176.130. The waiver shall be contained in the notice to contractors and the bid proposal for the project.~~

~~(2) The Commissioner of Highways shall appoint a construction prequalification committee composed of department employees to review each application and make a recommendation to the State Highway Engineer concerning the eligibility of a contractor to bid on a department construction or maintenance contract.~~

~~Section 3. Application for Certificate of Eligibility. A contractor desiring to procure a certificate shall submit, on the application and financial statement form TC-14-1, "Application for Certificate of Eligibility", December 1999 edition, provided by the department, information relating to the following:~~

~~(1) Ability to perform the types of work for which eligibility is requested.~~

~~(2) Construction experience resumes of the principal officers and key personnel of the contractor.~~

~~(3) Description of plant and equipment.~~

~~(4) Balance sheet and financial statement prepared as of the close of the last fiscal year or to reflect the current financial status of a newly established contractor.~~

~~(a) The financial statement of an applicant desiring eligibility in excess of $1,000,000 shall be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal office of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant shall also comply with the specific instructions relative to the presentation of supporting detail requested by the department to determine the amount of net current assets available.~~

~~(b) The financial statement of an applicant desiring eligibility of $1,000,000 or less shall be signed by the person preparing the statement and by a principal officer of the contractor.~~

~~(5) A "Certificate of Authority" if required by KRS 176.150(4).~~

~~Section 4. Confidentiality of Financial Information. In order to comply with KRS 61.878(1)(c) and KRS 176.210 the department shall not make available to the public the application information required in Section 3(3) and (4) of this administrative regulation.~~

~~Section 5. Method of Computing Maximum Eligibility Amount. (1)(a) The allowable net current assets as determined from the financial statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor.~~

~~(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.~~

~~(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.~~

~~(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the following maximum percentages:~~

~~(a) Organization and experience - twenty (20) percent;~~

~~(b) Plant and equipment - thirty (30) percent;~~

~~(c) Performance - fifty (50) percent.~~

~~(3)(a) The maximum eligibility amount shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor.~~

~~(b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as shown on the certificate of eligibility issued by the department and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted.~~

~~Section 6. Issuance of Certificate of Eligibility. (1)(a) The Construction Prequalification Committee shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.~~

~~(b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) days after receipt of the application unless the application is deferred as provided in Section 7(3) of this administrative regulation.~~

~~(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal-aid project which has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.~~

~~(2) A certificate of eligibility shall terminate 120 days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time. Ninety (90) days of this period is to permit the applicant to file a new application in accordance with Section 3 of this administrative regulation, thirty (30) days is for the department's review of the application and, if approved, the issuance of the new certificate of eligibility.~~

~~(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.~~

~~(4) An applicant may, in regard to the department's decision on its application:~~

~~(a) Request reconsideration of the department's decision in accordance with Section 7 of this administrative regulation; or~~

~~(b) Appeal the department's decision in accordance with Section 10 of this administrative regulation.~~

~~Section 7. Reconsideration of Decisions of Construction Prequalification Committee. (1)(a) An applicant may at any time request reconsideration of an application if the applicant is denied a certificate of eligibility or disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing. An applicant may also request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount if the request is submitted in writing within ten (10) days after receipt of the notice of the department's action.~~

~~(b) A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.~~

~~(c) The Construction Prequalification Committee shall review the request, may contact the applicant for clarification or expansion of the submitted information, and shall make recommendation to the State Highway Engineer.~~

~~(d) The Department of Highways shall notify the applicant of its determination within thirty (30) days after receipt of the request for~~

~~reconsideration.~~

~~(e) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his right to an administrative hearing pursuant to Section 10 of this administrative regulation.~~

~~(2) An applicant denied a certificate of eligibility may submit a new application if factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The department shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.~~

~~(3)(a) An application which is deferred by the department until the applicant settles outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the time that the reason for deferral is resolved to the satisfaction of the department.~~

~~(b) The department shall then take action on the deferred application to issue or deny a certificate of eligibility.~~

~~(c) The applicant submitting an application, which is deferred, shall be notified of the deferral within ten (10) days after action is taken by the department to defer the application. The applicant shall be notified pursuant to Section 10 of this administrative regulation of his right to an administrative hearing regarding the deferral.~~

~~(4) An interim application may be submitted if there has been a substantial increase in the net current assets of the applicant and the applicant wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility. The interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. The department shall review the interim application and notify the applicant of its determination within thirty (30) days after receipt of the application.~~

~~(5) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement or current information relating to the applicant's organization, equipment and work status. The information requested shall be submitted within thirty (30) days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.~~

~~(6) An applicant may request an administrative hearing if the applicant is denied a certificate of eligibility, his application is deferred, or the applicant disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing within ten (10) days after receipt of its denial or certificate of eligibility. The department shall hold an administrative hearing pursuant to the provisions of Section 10 of this administrative regulation.~~

~~Section 8. Revocation of Certificate of Eligibility or Reduction of Maximum Eligibility Amount. (1) Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, administrative regulations, or specifications applicable to a contract or subcontract, the department may take action to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.~~

~~(2) A notice to the certificate holder, setting forth the grounds on which the action is proposed, shall be sent by certified mail.~~

~~(3) The proposed action shall become final unless the certificate holder submits a written request for a reconsideration pursuant to Section 7 of this administrative regulation or an administrative hearing within ten (10) days after receipt of the notice.~~

~~(4) If the certificate holder requests an administrative hearing, the department shall hold this hearing in accordance with the provisions of Section 10 of this administrative regulation.~~

~~Section 9. Administrative Claims Process. (1) The cabinet shall not consider a claim for extra work as defined in the edition of the standard specifications for road and bridge construction applicable to the contract between the cabinet and the contractor unless the contractor has submitted form TC 63-32, "Notice of Changed Condition/Disagreement", December 1999 edition, to the resident engineer before beginning the disputed work.~~

~~(2) Any other claim not referenced in subsection (1) of this section that a contractor shall possess against the cabinet for compensation shall be submitted in writing on form TC 63-32, "Notice of Changed Condition/Disagreement", to the resident engineer within ten (10) days of the date of which the contractor knew or should have known of the existence of said claim. Any claim presented after said ten (10) days shall not be considered for payment by the cabinet. After receipt of TC 63-32, "Notice of Changed Condition/Disagreement", the cabinet shall respond to the contractor with form TC 63-33, "Acknowledgement of Notice of Changed Condition/Disagreement".~~

~~(3) If a contractor has a contract claim or requests relief from the cabinet, the contractor shall exhaust the administrative process within the cabinet as set forth below prior to requesting an administrative hearing.~~

~~(a)1. For claims involving extra work, the contractor shall submit his claim in writing, setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the resident engineer not later than thirty (30) days after receipt of the "Final Inspection and Formal Acceptance Report of Completed Construction", Form TC 63-44.~~

~~2. For claim disputes involving final quantities and payments, the contractor shall submit his claim in writing setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the resident engineer not later than sixty (60) days from the date of the "Final Release" (Form TC 63-34) sent by the cabinet.~~

~~(b) The resident engineer in consultation with the district transportation engineering branch manager for construction and the contractor shall attempt to resolve the dispute with the contractor. The resident engineer shall have sixty (60) days from the date of receipt of written notice of a formal claim to resolve the dispute.~~

~~(c) Should the claim not be resolved by the resident engineer, then the claim shall be submitted to the Director, Division of Construction, who shall have ninety (90) days to make the final determination.~~

~~(d) If the matter is not resolved by the resident engineer and the contractor and prior to making a final determination on the matter, the Director, Division of Construction, shall convene an informal settlement conference with the contractor for the purpose of either settling the dispute or identifying the issues which need resolution. If the settlement conference is unsuccessful, the Director, Division of Construction, shall notify the contractor in writing of the cabinet's decision regarding the contractor's claim. Said notification shall inform the contractor of his rights to an administrative hearing pursuant to Section 10 of this administrative regulation.~~

~~(e) Should the resident engineer or the Director, Division of Construction, fail to render a decision within the time limits set forth in this administrative regulation, said inaction shall be deemed a denial of the claim by the cabinet and the contractor may proceed with the administrative hearing process pursuant to Section 10 of this administrative regulation. Further, should the Director, Division of Construction, fail to render a decision in the time frame previously stated, the cabinet shall bear all costs associated with the hearing officer.~~

~~(f) The contractor shall request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the notification of the decision by the cabinet.~~

~~(g) Upon the agreement in writing of both parties, the parties may engage in formal nonbinding mediation of the dispute with a mediator agreeable to both parties. The parties participating in the mediation shall each pay one-half (1/2) of the costs associated with the mediator.~~

~~(h) If mediation is agreed upon by the parties, the formal administrative process that culminates with a KRS Chapter 13B hearing and all time limits therein shall be stayed until the cabinet or the contractor submits written notice to the other that they are terminating the mediation process. The time limits previously stayed shall commence to run upon the date of the written notice.~~

~~Section 10. Hearing Procedure. (1) A request for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the State Highway Engineer, Department of Highways, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.~~

~~(2) Upon receipt of a request for an administrative hearing, the State Highway Engineer shall forward the request to the Office of General Counsel and Legislative Affairs for proceedings in accordance with the provisions of KRS Chapter 13B. Failure to submit a written request for an administrative hearing to the State Highway Engineer within thirty (30) days of the date of the decision by the Director, Division of Construction, shall be ground to summarily deny the request for hearing and the decision by the Director, Division of Construction, shall stand.~~

~~(3) If a hearing is commenced, the hearing examiner shall prepare and submit his report with a recommendation to the Secretary of Transportation through the Office of General Counsel and Legislative Affairs.~~

~~(4) The secretary, after receiving the report and recommendation of the hearing examiner, may accept the report and recommendation in its entirety, or reject or modify any or all of the findings and recommendations of the hearing examiner as set out in a final order pursuant to KRS Chapter 13B.~~

~~(5) The contractor shall be notified by Final Order of the secretary's decision.~~

~~(6) The contractor shall have appeal rights pursuant to KRS Chapter 13B.~~

~~(7) The contractor shall reimburse the cabinet one-half (1/2) of the expenses of the hearing officer within thirty (30) days after the date of the entry of the final order by the Secretary of Transportation. The cabinet may withhold any sum owed a contractor on a current or future project that the cabinet is owed for the costs and/or expenses of the hearing officer.~~

~~Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:~~

~~(a) Transportation Cabinet form TC 14-1, "Application for Certificate of Eligibility", December 1999 edition;~~

~~(b) Transportation Cabinet form TC 63-32, "Notice of Changed Condition/Disagreement", December 1999 edition;~~

~~(c) Transportation Cabinet form TC 63-33, "Acknowledgment of Notice of Change Condition/Disagreement", December 1999 edition;~~

~~(d) Transportation Cabinet form TC 63-34, "Final Release", March 1998 edition; and~~

~~(e) Transportation Cabinet form TC 63-44, "Final Inspection and Formal Acceptance Report of Completed Construction", November 1997 edition.~~

~~(2) All material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Department of Highways, Division of Contract Procurement, 501 High Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564-3500.~~]

GREG THOMAS, Secretary
ANDY BARBER, State Highway Engineer
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: December 11, 2018

FILED WITH LRC: December 13, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 28, 2019 at 10:00 a.m. Eastern Time at the Kentucky Transportation Cabinet, Room C-106, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. 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: P. Kevin Moore, Executive Director, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email kevin.moore@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the bidder of a construction contract with the cabinet to obtain a certificate of eligibility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and provide information to potential bidders of construction contracts. This administrative regulation has not been amended since 2000.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 176.140 requires the cabinet to establish rules and regulations in order to determine the eligibility of bidders for construction contracts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation updates the requirements for bidders to become eligible.

(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: forms, information regarding audits and financial statements submitted by applicants for eligibility, processes involving submission, and review of applications.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to inform the public of the most current requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The cabinet is required to establish the requirements for bidders of construction contracts with the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the reg and inform contractors of the most current requirements in the bidding process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects companies performing construction and maintenance projects for the cabinet.

(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: Contractors working with the cabinet will be required to notify the KYTC project engineer on a weekly basis rather than waiting until the end of the project. This will require progressive work during the project.

(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 are anticipated. The work required in (a) was already part of this administrative regulation. The only difference will be the additional work required by a contractor to stay current and make the periodic submissions to the cabinet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question 3): The entities will be more efficient because the agency will be made aware of project costs on a more timely basis, and the agency can provide feedback as to which

costs are eligible for reimbursement. The entity can use this information to monitor resources and adjust the resources on the project accordingly.

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

(a) Initially: There are no costs associated with these amendments.

(b) On a continuing basis: There actually should be a savings. The amendment will prompt the agency to be involved in the project decisions and this could help reduce costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all bidders for construction contracts are required to follow 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? No divisions of state or local governments should be impacted. This administrative regulation impacts the approximately 200 contractors that perform roadwork for the cabinet. It also impacts the Division of Construction within the cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.140.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There will not be any costs.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

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 reading and mathematics[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) "Catch up" means individual student performance below proficient grows enough to achieve proficiency or to be on track to become proficient.~~

~~(4) "Chronic absenteeism" means a student who misses ten (10) percent or more of his/her enrolled academic year.~~]

(2)[~~(5)~~] "Comparison student group" means the student demographic group being contrasted to the reference group.

(3)[~~(6)~~] "Consolidated student groups" means a non-duplicated aggregation of student groups 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.

(4)[~~(7)~~] "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.[~~(8) "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~~.]

(5)[~~(9)~~] "Federal student group designation" means targeted support and improvement, and comprehensive support and improvement as provided in KRS 160.346.

(6)[~~(10)~~] "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.

(7)[~~(11)~~] "Full academic year" means 100 or more instructional days of student enrollment within the school year.

(8)[~~(12)~~] "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.

(9)[~~(13)~~] "Growth" means a student's continuous improvement toward proficiency or above.

(10)[~~(14)~~] "Indicator" means a component of the accountability system that provides specific information on the school or district.

(11)[~~(15)~~] "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002.[~~(16) "Keep up" means individual student performance at or above proficient that grows at a rate to maintain proficiency or above.~~

~~(17) "Less than catch up" means individual student performance below proficient and not on track to become proficient.~~]

(12)[~~(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.[~~(19) "Move up" means individual student performance at proficient that grows at a~~

~~rate to be on track to become distinguished.~~

~~(20) "Opportunity and access" means equitable availability to research-based student experiences and school factors that impact student success.~~]

(13)[~~(21)~~] "Practical significance" means a measure of the differences between student groups has real meaning.

(14)[~~(22)~~]"Proficiency indicator" means the measure of academic status or performance for reading and mathematics on state assessments.

(15)[~~(23)~~] "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

(16) "Quality of school climate and safety" means the measures of school environment.

(17)[~~(24)~~] "Rating" means the process of inclusion of an indicator in the formal overall rating of the school or district.

(18)[~~(25)~~] "Reference group" means a student demographic group to which another group is contrasted to provide a benchmark for performance.

(19)[~~(26)~~] "Separate academic indicator for science, social studies, and writing" means the measure of academic status or performance for science, social studies, and writing on state assessments.

(20)[~~(27)~~] "Transition readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.

(21)[~~(28)~~] "Value table" means a set of numbers that are used to attribute scores to different performance levels.[~~(29) "Work ethic certification" means a process by which a student demonstrates essential skills and workplace readiness.~~]

(22)[~~(30)~~]"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;—separate academic indicator for science, social studies, and writing; growth; transition readiness; achievement gap closure; quality of school climate and safety[~~opportunity and access~~]; and graduation rate.

(1) The proficiency indicator shall be measured by student performance on state tests in reading and mathematics.

(2) A separate academic indicator shall be measured by student performance on state tests in science, social studies, and writing.

(3) The growth indicator shall be calculated at the elementary and middle school levels. The growth indicator shall be measured:

(a) Based on a growth value table in reading and mathematics; and

(b) Progress toward achieving English proficiency by English learners.

(4) The achievement gap closure indicator shall be measured as follows:

(a) Reducing the gap in performance between the following comparison groups and reference group in the combined content areas of reading and[~~,~~] mathematics[~~, science, 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 and[,] mathematics[~~, science, 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 and[~~/~~] reduced and reduced-price meal eligible, students with disabilities who have an IEP, English learners, and a consolidated student group.

(5) The quality of school climate and safety indicator.[~~The opportunity and access indicator shall be measured for rich curricula, equitable access, and school quality 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.~~

~~(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.~~

~~(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.~~]

(6) The transition readiness indicator shall be measured at high school 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, mathematics, science, 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:~~]

(a)[~~1.~~] Earn a regular or alternative high school diploma; and

(b)[~~2.~~] Achieve academic readiness or career readiness.

1.[~~a.~~] A school shall receive credit for each student demonstrating academic readiness by:

a.[~~(i)~~] Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination; or

b.[~~(ii)~~] Completing six (6)[~~or more~~] hours of Kentucky Department of Education approved dual credit and receiving a grade of C [~~B~~] or higher in each course; or

c.[~~(iii)~~] Completing two (2)[~~or more~~] advanced placement (AP) courses and receiving a score of three (3) or higher on each AP assessment; or

d.[~~(iv)~~] Receiving a score of five (5) or higher on two (2)

examinations for international baccalaureate courses; or

e.[(v)] Scoring at or above the benchmark on two (2)[or more] Cambridge Advanced International examinations; or

f.[(vi)] Completing a combination of academic readiness indicators listed above.

g.[(vii)] Demonstration of academic readiness listed in paragraph 6(b)1[2.a.] 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.

2.[b.] A school shall receive credit for each student demonstrating career readiness by:

a.[(i)] Scoring at or above the benchmark on industry certifications as approved by the Kentucky Workforce Innovation Board on an annual basis; or

b.[(ii)] Scoring at or above the benchmark on the career and technical education end-of-program assessment for articulated credit; or

c.[(iii)] Completing six (6)[or more] hours of Kentucky Department of Education approved CTE dual credit, and receiving a grade of C[B] or higher in each course; or

d.[(iv)] Completing a Kentucky Department of Education approved or labor cabinet-approved apprenticeship; or

e.[(v)] Completing a Kentucky Department of Education approved alternate process to verify exceptional work experience.

3.[c.] For students who qualify as English learners in high school: Meeting criteria for English language proficiency to be English language ready.

4.[d.] Students participating in the alternate assessment program shall meet criteria based on academic or career alternate assessment requirements.

(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 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 and mathematics);

(b) Separate academic indicator (science, social studies, and writing);

(c) Growth (elementary and middle school);

(d) Transition readiness (high school);

(e) Achievement gap closure;

(f) Quality of school climate and safety[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, social studies, and writing; growth; achievement gap closure; quality of school climate and safety[transition readiness; opportunity and access]; and federal student group designation.

(b) Middle schools shall include data from: proficiency; separate academic indicator for science, social studies, and writing; growth; achievement gap closure; quality of school climate and safety[transition readiness; opportunity and access]; and federal student group designation.

(c) High schools shall include data from: proficiency; separate academic indicator for science, social studies, and writing; achievement gap closure; transition readiness; graduation rate; quality of school climate and safety[opportunity and access;] and federal student group designation.

(d) LEAs shall include data from: school proficiency; separate academic indicator for science, social studies, and writing, growth; achievement gap closure; transition readiness; graduation rate; and quality of school climate and safety[opportunity and access].

Section 4. Calculations for Reporting Categories. (1) Proficiency for reading and mathematics shall be rated equally in elementary, middle and high schools and LEAs by awarding points as described in paragraph 2(b) of this section.

(2) The separate academic indicator for science, social studies, and writing shall be rated in elementary, middle and high schools and in LEAs by awarding points as described in paragraph 2(b) of this section. The highest proportion shall be attributed to science and social studies.

(a) For any content area (reading, mathematics, science, social studies, and writing) where data are not available, the data of the remaining content areas shall be redistributed proportionally across proficiency and separate academic indicator.

(b) 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 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 reading and mathematics[each tested] content area assessment using points in accordance with paragraph 2(b) 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:

a. White;

b. African American;

c. Hispanic or Latino;

d. Asian;

e. Native Hawaiian or other Pacific Islander;

f. American Indian or Alaska Native;

g. Two (2) or more races [/] ethnicities;

h. Students in poverty based on eligibility for free/reduced-price

meals;

i. Students with disabilities who have an IEP;

j. English learners; and

k. A consolidated student group.

2. Combining scores for reading and mathematics[~~all~~] content area assessments into an index using points in accordance with paragraph 2(b) of Section 4 of this administrative regulation for each student demographic group.

3. Compare the index 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 and[~~,~~] mathematics[~~, science, social studies, and writing~~].

4. If the current year index is equal to or greater than the current year's annual target for each student demographic group in the combined content areas of reading and[~~,~~] mathematics[~~, science, social studies, and writing~~], the student demographic group gap shall be considered "reduced" and the school shall receive two (2) gap closure points.

5. If the current year index is equal to or greater than the current year's annual target for each student demographic group in the combined content areas of reading and[~~,~~] mathematics[~~, science, 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 is less than the current year's annual target for each student demographic group in the combined content areas of reading and[~~,~~] mathematics[~~, science, 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 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.

[~~(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 and reported using the following terms: less than catch up, catch up, keep up, and move up.~~]

(b)[~~(c)~~] The school calculation for mathematics shall be the sum of the total points from the growth value table for all students divided by the total number of scores.

(c)[~~(d)~~] The values in the growth value table below shall be used in calculating growth in this subsection.

Growth Value Table (Points for student performance in Year 2, given Performance in Year 1)						
[~~Projected~~]	Novice		Apprentice		Proficient	Distinguished
[~~Current~~] Year 1 Student Performance	Low	High	Low	High		
Distinguished	0 [~~-1.50 (L)~~]	0 [~~-1.25 (L)~~]	0 [~~-1.00 (L)~~]	0 [~~-0.75 (L)~~]	0 [~~0.00 (K)~~]	50 [~~0.25 (K)~~]
Proficient	0 [~~-1.00 (L)~~]	0 [~~-0.75 (L)~~]	0 [~~-0.50 (L)~~]	0 [~~-0.25 (L)~~]	50 [~~0.25 (K)~~]	100 [~~0.50 (M)~~]
Apprentice High	0 [~~-0.75 (L)~~]	0 [~~-0.50 (L)~~]	0 [~~-0.25 (L)~~]	50 [~~0 (L)~~]	100 [~~0.25 (C)~~]	150 [~~0.75 (M)~~]
Apprentice Low	0 [~~-0.50 (L)~~]	0 [~~-0.25 (L)~~]	50 [~~0 (L)~~]	100 [~~0.25 (L)~~]	150 [~~0.50 (C)~~]	200 [~~1.00 (M)~~]
Novice High	0 [~~-0.25 (L)~~]	50 [~~0 (L)~~]	100 [~~0.25 (L)~~]	150 [~~0.50 (C)~~]	200 [~~0.75 (C)~~]	250 [~~1.25 (M)~~]
Novice Low	0 [~~(L)~~]	100 [~~0.25 (L)~~]	150 [~~0.50 (C)~~]	200 [~~0.75 (C)~~]	250 [~~1.00 (C)~~]	300 [~~1.50 (M)~~]

~~Less than Catch Up (L)~~

~~Moving Up (M)~~

~~Catching Up (C)~~

~~Keeping Up (K)~~

(d)[~~(e)~~] The school calculation for reading shall be the sum of the total points for all students from the growth value table plus growth for English language proficiency as described in Section 4(4)(f)[~~(g)~~] of this administrative regulation divided by the total number of scores.

(e)[~~(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 involving Kentucky educators and advised by technical experts shall be utilized.

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.

WIDA ACCESS score	WIDA ACCESS score current year

previous year								
	1	1.5	2.0	2.5	3.0	3.5	4.0	4.5
4.0	0 [-1.5]	0 [-1.25]	0 [-1.0]	0 [-.75]	0 [-.50]	0 [-.25]	50 [0]	100 [.25]
3.5	0 [-1.25]	0 [-1.0]	0 [-.75]	0 [-.50]	0 [-.25]	50 [0]	100 [.25]	150 [.5]
3.0	0 [-1.0]	0 [-.75]	0 [-.50]	0 [-.25]	50 [0]	100 [.25]	150 [.50]	200 [.75]
2.5	0 [-.75]	0 [-.50]	0 [-.25]	50 [0]	100 [.25]	150 [.50]	200 [.75]	250 [1.0]
2.0	0 [-.50]	0 [-.25]	50 [0]	100 [.25]	150 [.50]	200 [.75]	250 [1.0]	300 [1.25]
1.5	0 [-.25]	50 [0]	100 [.25]	150 [.50]	200 [.75]	250 [1.0]	300 [1.25]	300 [1.5]
1.0	0	100 [.25]	150 [.50]	200 [.75]	250 [1.0]	300 [1.25]	300 [1.5]	300 [1.5]

4. Total points for English learners shall be added to the sum of the reading growth points for all students in reading as described in Section 4(4)(f)[(g)] of this administrative regulation.

(f)[(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 quality of school climate and safety[opportunity and access] indicator shall be rated for elementary, middle, 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 based on data collected from Kentucky's student information system and other statewide systems for individual students.]

(a)[(b)] The Kentucky Board of Education shall approve the measures of school climate and safety[opportunity and access] including the accumulation of credit.

(b)[(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 quality of school climate and safety[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, mathematics, science, 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 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.

Elementary/Middle Schools								
Overall Rating	Proficiency (Reading & Mathematics)	Separate Academic Indicator (Science, Social Studies, and Writing)	Growth (including English Language Learners)	Achievement Gap Closure	Quality of School Climate and Safety [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 High	Very High High	Very High Low	Very High High	Very High High	[Very High High]	No designation	
4 Stars	Any 5-star combination except Achievement Gap Closure is Medium						No designation	
	One Medium, three [four] High Two [Three] Medium, two High					[High Medium]		
3 Stars	Any 4- or 5-Star combination except Achievement Gap Closure is Low Or Any 4- or 5-Star combination						No designation TSI	*Schools identified for Comprehensive Support and Improvement (CSI) are classified with a 1 Star rating.
	Three [Four] Medium, one High Three [Four] Medium, one Low					[High Medium High Low]	No designation or TSI	
2 Stars	Two [Three] Medium, two Low One Medium, three [four] Low					[Medium Low]	No designation or TSI	

1 Star	Five [~~Six Low~~] or Very Low Or bottom 5%*	CSI or TSI	

High Schools								
Overall Rating	Proficiency (Reading & Mathematics)	Separate Academic Indicator (Science, Social Studies, & Writing)	Other Academic Indicator Transition Readiness (including English Language Learners)	Achieve-ment Gap Closure	Quality of School Climate and Safety [~~Oppor-tunity & 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 High	Very High High	Very High High	Very High High	Very High Very High	Very High Very High	No designation	
4 Stars	Any 5-star combination except Achievement Gap Closure is Medium						No designation	
	One Medium, four High Three Medium, two High					High Medium	No designation	
3 Stars	Any 4- or 5-Star combination except Achievement Gap Closure is Low Or Any 4- or 5-Star combination						No designation TSI	*Schools identified for Comprehensive Support and Improvement (CSI) are classified with a 1 Star rating.
	Four Medium, one High Four Medium, one Low					High Medium High Low	No designation or TSI	
2 Stars	Three Medium, two Low One Medium, four Low					Medium Low	No designation or TSI	
1 Star	Six Low or Very Low Or bottom 5%*						CSI or TSI	

LEA								
Overall Rating	Proficiency (Reading & Mathematics)	Separate Academic Indicator (Science, Social Studies, & Writing)	Growth (including English Language Learners)	Achieve-ment Gap Closure	Quality of School Climate and Safety [~~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 High	Very High High	Very High Low	Very High High	Very High Very High	Very High High	Very High High	
4 Stars	Any 5-star combination except Achievement Gap Closure is Medium							
	One Medium, five High Three Medium, three High						High Medium	
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						High Low	
2 Stars	Four Medium, two Low Two Medium, four Low						Medium Low	
1 Star	Six Low or Very Low						Low	

(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.

(c) The relationship between each category and the approximate weight of proficiency, a separate academic indicator for science, social studies, and writing, achievement gap closure, growth, transition readiness, quality of school climate and safety[~~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 and Mathematics)	Separate Academic Indicator (Science, Social Studies, and Writing)	Growth (including English Language Learners)	Achievement Gap Closure	Quality of School Climate and Safety [~~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	10-40	10-20	---	10-25	10-20	15-30	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 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) Kentucky will identify schools to determine bottom five (5) percent and ten (10) percent based on the indicators of the 5-star system.

(h) If data cannot be calculated for an indicator, the weights shall be redistributed proportionally 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, social studies, and writing, achievement gap closure, growth, quality of school climate and safety, and transition readiness for a school and LEA.[~~(b) Opportunity and access calculations shall be based on the students' enrollment.~~]

(b)[~~(c)~~] Graduation rate calculations shall be based on the students' final enrollment.

(c)[~~(d)~~] Student demographic groups shall have a minimum of ten (10) students to be included in school rating calculations.

(d)[~~(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:

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, 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).

WAYNE D. LEWIS, Commissioner of Education
HAL HEINER, Chairperson

APPROVED BY AGENCY: December 12, 2018

FILED WITH LRC: December 13, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 24, 2019, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna L. Durrett, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools.

(b) The necessity of this administrative regulation: 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.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: proficiency (reading/writing and mathematics), separate academic indicator (science and social studies), growth (elementary and middle schools only), graduation rate (high school only), transition readiness, achievement gap closure, and opportunity and access. The multiple indicators incorporate the student test results and school quality measures. The regulations complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(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 establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools. The amendments to this regulation will change certain accountability indicators and measures in the system. The amendments will change the letter grade requirement for dual credit in Transition Readiness at the high school from a "B" to a "C", and eliminate the Transition Readiness Indicator at the elementary and middle school levels. In addition, the way growth is measured will be changed at the elementary and middle school levels. The projection of growth has been removed and new value tables for both Growth and English Learners is included in the amendments. Another amendment to the regulation involves simplifying Achievement Gap Closure and focusing on reading and mathematics instead of all content areas and how it will be calculated. The last amendment will change the Opportunity and Access Indicator and measures. All the measures in the regulation beforehand for Opportunity and Access will be removed and the indicator name will be changed to Quality of School Climate and Safety to align with state statute.

(b) The necessity of the amendment to this administrative regulation: After feedback from first year implementation of the accountability indicators from review of federal and state law and comments from various stakeholders, additional regulatory changes are proposed to simplify the accountability system and to continue complying with legal requirements.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: proficiency (reading and mathematics), separate academic indicator (science, social studies and writing), growth (elementary and middle schools only), graduation rate (high school only), transition readiness, achievement gap closure, and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulations amendments complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public LEAs and schools in Kentucky with schools grade 3 or higher and supporting staff in the Kentucky Department of Education (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: KDE, LEAs and schools shall implement the specific details of the assessment and accountability system. The regulation defines the indicators and measures to be included in the accountability system used to evaluate and rate the performance of Kentucky's public LEAs and schools. The system is a multi-dimensional model that uses student- and school-based data to differentiate performance. The Kentucky Department of Education implements and manages the accountability system, as established and promulgated in regulation by the Kentucky Board of Education. LEAs and schools implement the required assessments and processes that generate data reported annually in the accountability system. The data reported help schools and districts improve student achievement and growth, close the achievement gap among groups, ensure students are ready to transition to the next step of education or life, and provide opportunity and access for all students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The accountability system requires no additional direct costs to the LEAs and schools. LEA's and schools may choose to implement new programs or services in response to the new accountability system that may result in additional costs for LEA's and schools, however, this would be a locally determined decision. KDE anticipates additional indirect cost to implement new accountability system. Additional costs are expected to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The accountability system has several key goals: promote higher levels of student learning and achievement, reduce achievement gaps and ensure equity, establish opportunity and access for students to receive a quality education, build a culture of high expectation and continuous improvement, and communicate a clear and honest understanding of strengths and opportunities for improvement in LEAs and schools.

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

(a) Initially: The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(b) On a continuing basis: Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general and federal 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 increased fees or funding are anticipated as a result of this regulation, however activities related to this regulation as required by SB 1 (2017) may require additional funding as described above.

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

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? Public Local Education Agencies (LEAs) and schools.

(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; 20 U.S.C. secs. 6301 et seq.

(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.

(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? The transition to the new accountability system will require the Kentucky Department of Education (KDE) to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(d) How much will it cost to administer this program for subsequent years? Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

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 (+/-):The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system. Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 001:030. Prohibited alcoholic beverage advertisements[~~statements~~].

RELATES TO: KRS 244.130

STATUTORY AUTHORITY: KRS 241.060(1), 244.130(1)[~~Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.060(1) authorizes[~~244.130 requires~~] the[~~Alcoholic Beverage Control~~] board to promulgate[~~prescribe~~] administrative regulations regarding matters over which the board has jurisdiction. KRS 244.130 authorizes the board to prohibit[~~dealing with advertising of~~] alcoholic beverage advertising practices by administrative regulations[~~beverages~~]. This administrative regulation prohibits certain[~~is to prevent false or misleading~~] advertising relating to alcoholic beverages[~~of distilled spirits and wine~~].

Section 1. Prohibited Advertising[~~Statements; Restrictions~~]. An advertisement for any alcoholic beverage shall not[~~of distilled spirits or wine shall not contain~~]:

(1) Be[~~Any statement that is~~] false or misleading;[~~in any material particular.~~]

(2) Disparage, slander or libel[~~Any statement that is disparaging of~~] a competitor's product;[~~products.~~]

(3) Be[~~Any statement, design, device, or representation which is~~] obscene or indecent;[~~.~~]

(4)[~~Any statement concerning or illustrations of family scenes pertaining to the home.~~

~~(5) Any statement, design, device, or representation of or relating to analysis, standards or tests, irrespective of falsity, which the Alcoholic Beverage Control board finds to be likely to mislead the consumer.~~

~~(6) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Alcoholic Beverage Control board finds to be likely to mislead the consumer. No guaranty cards or labels shall be used that would indicate the consumer would be entitled to a refund of the purchase price if dissatisfied with the distilled spirits or wine.~~

~~(7) Any statement that~~] Represent the alcoholic beverage is[~~distilled spirits or wine are~~] produced, brewed, distilled, blended, made, bottled, or sold under or in accordance with any municipal, state or federal authorization, law or regulation; and if a municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto;[~~.~~

~~(8) The words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to federal regulations upon the labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are required to appear upon the label.~~]

~~(9) Any statement of bonded wine cellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded wine cellar and bonded winery numbers may be made in the following form: "Bonded Wine cellar No. ____," "Bonded Winery No. ____," "B.W.C. No. ____," "B.W. No. ____." No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under government supervision or in accordance with government specifications or standards.~~

~~(10) The word "pure" except as part of the bona fide name of a licensee or a retailer for whom the distilled spirits are bottled.~~

~~(11) The terms "double distilled," "triple distilled," or any similar term.~~]

(5) Contain representations about an alcoholic beverage brand or product which is inconsistent with any label statement;[~~(12) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of distilled spirits or wine that is inconsistent with any statement on the labeling thereof.~~

~~(13) Statements of age. The advertisement shall not contain any statement, design or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of federal regulations. An advertisement for any whiskey or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any rum which has been aged for not less than four (4) years may, however, contain general inconspicuous age, maturity or other similar representations even though the optional age statement does not appear on the label of the advertised product and in the advertisement itself.~~

~~(14) Curative and therapeutic effects. The advertisement shall not contain any statement, design, or device representing~~]

(6) Represent that the use of any alcoholic beverage[~~distilled spirits or wine~~] has curative properties,[~~or~~] therapeutic effects, good health benefits, weight reducing effects, muscle growth effects, or any other like representation if such representation[~~statement~~] is untrue in any particular, or tends to create a misleading impression;[~~.~~

~~(15) Place of origin. The advertisement shall not represent that the distilled spirits or wine were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.~~

~~(16) Confusion of brands. Two~~]

(7) Advertise two (2) or more different alcoholic beverage brands or products[~~lots of distilled spirits or wine shall not be advertised~~] in one (1) advertisement[~~(or in two (2) or more advertisements in one (1) issue of a periodical or newspaper, or in one (1) piece of other written, printed, or graphic matter)~~] if the advertisement tends to create the impression that a representation[~~representations~~] made as to one (1) brand or product applies[~~lot apply~~] to the other;[~~or others, and if as to such latter the representations contravene any provision of these administrative regulations or are in any respect untrue~~].[~~(17) Flags, seals, coats of arms, crests, and other insignia. No advertisement shall contain any statement, design, device, or pictorial representation of or relating~~]

(8) Relate to, or be capable of being construed as relating to the armed forces;[~~nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal coat of arms, crest, or insignia is associated.~~]

(9) Depict any flag, seal, coat of arms, crest, or other insignia, which is likely to mislead a consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision or approval of, the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated;

(10) Use the terms "free" or "complimentary" alcoholic beverages, or any other terms, which imply or suggest giveaways of alcoholic beverages unless the statement references permissible manufacturer or wholesaler coupons or limited samples which the licensee is authorized to serve under a license held;

(11) Use the phrase "all-you-can-drink", "unlimited drinks" or any other phrase or terms which imply or suggest that a consumer will receive an unlimited number of alcoholic beverage drinks upon payment of a fee;

(12) Take any action, directly, or indirectly, to target minors in the advertising, promotion or marketing of alcoholic beverage products, or take any action the primary purpose of which is to initiate, maintain or increase the incidence of minor consumption of alcoholic beverages.

(13) Offer or describe a product, service, or activity, that is prohibited by Kentucky law; or

(14) Be prohibited by Federal law.

CHRISTINE TROUT VAN TATENHOVE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 13, 2018

FILED WITH LRC: December 13, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2019 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email lee.walters@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Lee Walters

(1) Provide a brief summary of**:**

(a) What this administrative regulation does: This administrative regulation establishes prohibited statements in the advertising of alcoholic beverages.

(b) The necessity of this administrative regulation: KRS 244.130 requires the board to promulgate administrative regulations on the advertisement of alcoholic beverages.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulations provides guidance on what types of advertisement will be permitted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation complies with KRS 244.130 and also assists licensees in determining what is not permissible when advertising alcoholic beverages.

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

(a) How the amendment will change this existing administrative regulation: This regulation changes the title of the regulation to more appropriately describe the contents of the regulation. This regulation changes the title of the regulation to more accurately describe the contents of the regulation. It further updates the language used in the regulation, and clarifies that the provisions apply to the advertisement of all alcoholic beverages by eliminating distinctions, consistent with the concurrent repeal of 804 KAR 2:015, which previously governed advertising for malt beverages only.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for a streamlined regulatory process to treat all alcoholic beverage advertising consistently.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 244.130 requires the board to promulgate administrative regulations on the advertisement of alcoholic beverages.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist licensees by placing all regulations related to advertising

alcoholic beverages into one regulation instead of separating out by type.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Alcoholic Beverage Control is impacted by this administrative regulation. Licensees of the department are also affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will need to review the updated list of prohibited statements and ensure that their future advertising for alcoholic beverages does not violate the list 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): Regulated entities should have no cost to comply with this administrative regulation; once the list of prohibited statements becomes effective, the regulated entities must simply take it into consideration when developing future advertisements for alcoholic beverages.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will benefit from a definitive list of prohibitions on alcoholic beverage advertising for all products located in a single administrative regulation.

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

(a) Initially: There is no cost to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control 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 244.130 requires the board to promulgate administrative regulations for the advertisement of alcoholic beverages.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no future costs expected to administer this administrative.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Safety
(Amendment)

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

RELATES TO: KRS 351.010(1)(o), 351.127, 351.182, 352.390

STATUTORY AUTHORITY: KRS 351.070(13), 351.127(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the secretary to promulgate administrative regulations necessary and suitable for the proper administration of this chapter. KRS 351.127(1) requires the department to promulgate administrative regulations establishing training requirements for mine emergency technicians. This administrative regulation establishes standards by which mine emergency technicians shall be trained, certified, and retrained.

Section 1. Definitions.

(1) "Current", as applied to training and its certification, means the present status of training, as certified by the agency that reviews or attests to it.

(2) "Emergency medical technician" or "EMT" means a person who is certified by the Kentucky Board of Emergency Medical Services.

(3) "Licensee" is defined by KRS 351.010(1)(n)[~~KRS 351.010(1)(o)~~].

(4) "Mine emergency technician" or "MET" means a person certified by the Division of Mine Safety[~~Office of Mine Safety and Licensing~~].[~~(5) "OMSL" means the Office of Mine Safety and Licensing.~~]

Section 2. MET Certification Requirements.

(1) Each applicant for certification as a MET shall:

(a) Hold a surface or underground miner's certification in the Commonwealth of Kentucky;

(b) Successfully complete the standard program of training and education established by this administrative regulation and a series of written and practical skills examinations prescribed by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7;

(c) Be eighteen (18) years of age or older; and

(d) Understand and be able to read, speak, and write in the English language.

(2) A Kentucky certified miner who is an emergency medical technician with a current CPR course completion card may apply for initial certification as a mine emergency technician.

Section 3. MET Training Course Requirements.

(1) The training course curriculum for certification as a MET shall include:

(a) Instruction in cardio pulmonary resuscitation (CPR) and adult one (1) and two (2) rescuer CPR, approved by at least one (1) of the following organizations:

1. The American Red Cross;

2. The American Safety and Health Institute;
3. The American Heart Association; or
4. The Nation Safety Council; and

(b) The following subjects from textbooks as prescribed by the Division of Mine Safety[~~Office of Mine Safety and Licensing~~];

1. Roles and responsibilities;
2. The human body;
3. Patient assessment;
4. Airway and Pulmonary Resuscitation;
5. Cardiac emergency;
6. Breathing aides and oxygen therapy;
7. Bleeding and shock;
8. Soft tissue and internal organs;
9. Upper and lower extremity muscular and skeletal injuries;
10. Skull and spine injuries;
11. Chest, abdominal, and genital injuries;
12. Medical emergency;
13. Hazardous materials;
14. Environmental and electrical emergencies;
15. Special patterns and behavioral problems;
16. Disaster management;
17. Lifting and moving;
18. Extrications;
19. Infection control; and
20. Burns.

(2) The training course shall also:

(a) Be not less than forty (40) hours in duration;

(b) Be taught by an instructor certified by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7;

(c) Include equipment, texts, audiovisual and other materials approved by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7 as adequate to train METs;

(d) Be limited to fifteen (15)[~~thirty (30)~~] students per instructor; and

(e) Be conducted in a training facility approved by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7 as adequate to train METs.

Section 4. MET Certification Examination.

(1) When the MET applicant takes the MET certification examination, applicant shall provide verification on a Certificate of Training form, Federal Form 5000-23, that the applicant has successfully completed the standard program of MET training and education prescribed by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7.

(2) The Certificate of Training form, Federal Form 5000-23, shall be signed by the MET applicant, be embossed with the MET instructor certification number, and signed by the MET instructor who administered the MET course to the applicant.

(3) The initial MET certification exam shall be taken within sixty (60) days of completion of the MET training course required in Section 3 of this administrative regulation.

(4) The MET certification examination[~~,~~] shall be prescribed and administered by Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7 and shall consist of the following two (2) parts:

(a) A written examination with an overall grade of eighty (80) percent shall be required to pass; and

(b) A practical examination, which shall consist of the following two (2) parts:

1. a. The first part shall consist of mandatory stations in which the applicant shall be tested on one (1) or more required skills.

b. The applicant shall demonstrate proficiency in all mandatory stations.

2. a. The second part shall consist of "wild card" stations in which one (1) or more skills shall be tested.

b. The applicant shall randomly draw the skills on which he shall be tested when the examination is given.

(5) (a) If the applicant for certification fails to pass the written or practical portion of the examination, he shall be permitted one (1) opportunity to retake the portion or portions failed.

(b) The reexamination shall be conducted within sixty (60) days of the initial examination date.

(6) If the applicant for certification fails to pass the written or practical portion after reexamination, he shall retake the entire MET training course before being eligible for subsequent examination.

Section 5. Certification Renewal Continuing Education Requirements.

(1) (a) For a MET to remain certified, the applicant shall receive continuing education or retraining in a period not to exceed one (1) year from the last day of the month in which the most current retraining was completed.

(b) A MET shall earn at least eight (8) continuing education or retraining hours annually, with at least half being devoted to practical skills in a structured instructional setting.

(2) Continuing education and retraining courses for mine emergency technicians shall be taught by certified MET instructors.

(3) (a) A MET shall maintain a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR.

(b) The card shall be presented to the MET instructor at the time of the MET recertification.

(4) An applicant for recertification shall receive credit for completion of continuing education and retraining hours in subjects required by the Division of Mine Safety's[~~OMSL's~~] MET curriculum listed in Section 3 of this administrative regulation.

(5) Each subject or training course for which credit is claimed shall be countersigned by the MET instructor teaching the subject or course.

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least four (4) different subject areas of the approved MET curriculum, with a maximum of two (2) hours per subject area.

(7)(a) The MET shall submit to a [~~an~~] Division of Mine Safety[~~OMSL~~] district office a copy of the Mine Emergency Technician Recertification form, EF-16, within thirty (30) days of the MET retraining completion dates if the eight (8) hours training was received from multiple locations.

(b) The Mine Emergency Technician Recertification form, EF-16, shall be signed by the MET, be embossed with the MET instructor certification number, and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

(c) A copy of the Mine Emergency Technician Recertification form, EF-16, shall be maintained at the mine site.

Section 6. Expiration of Certification.

(1) A MET certification shall expire one (1) year from the last day of the month in which the certification was issued, unless the person holding the MET certification satisfies the recertification and continuing education requirements detailed in Section 5(1) of this administrative regulation.

(2) Upon the expiration of the MET certification, the holder shall not function in the capacity of a mine emergency technician.

Section 7. Reinstatement of Certification. A former MET may reinstate an expired certification as follows:

(1) If the certificate has expired within the past one (1) year, the applicant may apply for certification reinstatement by:

(a) Successfully completing eight (8) hours of MET training and reeducation classes as established in Section 5(1) through (7) of this administrative regulation;

(b) Providing a copy of a current CPR certification as established in Section 3(1)(a) of this administrative regulation; and

(c) Submitting proof of prior MET certification.

(2) If the certificate has been expired for more than one (1) year but less than three (3) years, the applicant may apply for certification reinstatement by:

(a) Successfully completely eight (8) hours of MET training and reeducation classes as established in Section 5(1) through (7) of this administrative regulation;

(b) Providing a copy of current CPR certification as established in Section 3 of this administrative regulation;

(c) Submitting proof, in accordance with KRS 351.182 that he or she is drug and alcohol free;

(d) Submitting proof of prior MET certification; and

(e) Completing the initial MET certification examination requirements established in Section 4(4) of this administrative regulation.

Section 8. Designation of a MET.

(1) A person designated by the licensee to function as a MET in an underground coal mine shall:

(a) Hold an underground miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from Division of Mine Safety[~~OMSL~~]; and

(c) Maintain verification of MET certification at the mine site.

(2) A person designated by the licensee to function as a MET at a surface coal mine shall:

(a) Hold a surface miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from the Division of Mine Safety[~~OMSL~~]; and

(c) Maintain verification of MET certification at the mine site.

(3) A certified MET instructor designated by the licensee to function as a mine emergency technician shall:

(a) Meet the requirements of subsections (1)(a) or (2)(a) of this section;

(b) Maintain verification of MET certification at the mine site; and

1. Teach an eight (8) hour MET retraining class during the period of certification; or

2. Meet the recertification continuing education requirements established in Section 5 of this administrative regulation.

Section 9. MET Instructor Certification Requirements. MET instructors, in addition to being certified as a MET, shall:

(1)(a) Hold a mine instructor certification issued by the Division of Mine Safety[~~OMSL~~]; and

(b) Hold a current instructor card to teach adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR issued by at least one of the organizations listed in Section 3(1)(a) of this administrative regulation; or

(2) Be an EMT instructor who is also qualified in accordance with subsection (1) of this section.

Section 10. Responsibilities of the MET Instructor. The MET instructor shall:

(1) Utilize equipment, texts, audio-visual and other materials deemed appropriate by the department;

(2) Notify the district office of the Division of Mine Safety[~~OMSL~~] fourteen working (14) days prior to his commencement of any MET classes, including initial and retraining classes;

(3) Verify on a Mine Safety and Health Administration Certificate of Training form, Federal Form 5000-23, that the MET applicant has successfully completed the standard MET program of training and education prescribed by the Division of Mine Safety[~~OMSL~~], in accordance with 805 KAR Chapter 7;

(4) Verify on a Mine Emergency Technician Recertification form, EF-16 that the MET has successfully completed each subject or training course for which credit shall be approved;

(5) Immediately upon completion of initial training or continuing education courses, the completed form, Mine Emergency Technical Recertification form, EF-16, shall be provided to the student; and

(6)(a) Shall submit copies of all Mine Emergency Technician Recertification form EF-16, forms within thirty (30) days of MET retraining completion dates, to the Division of Mine Safety[~~Office of Mine Safety and Licensing~~].

(b) The Mine Emergency Technician Recertification form, EF-16, shall be signed by the MET, embossed with the MET instructor certification number, and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

Section 11. Denial, Revocation, and Suspension of MET Certification. (1) The Mine Safety Review Commission may revoke, suspend, or probate the MET certification or MET instructor certification of a person who the commission determines, based upon allegations substantiated by the Division of Mine Safety[~~OMSL~~], has responded or acted inappropriately in the capacity of a mine emergency technician or MET instructor by failing to:

(a) Follow appropriate standards of care in the management of a patient;

(b) Administer treatment in a responsible manner in accordance with the mine emergency technician's or MET instructor's level of certification;

(c) Maintain patient confidentiality;

(d) Respond timely to an emergency.

(2) All actions taken by the commission regarding the revocation, suspension, or probation of a MET certification or MET instructor certification shall be so taken in accordance with KRS 352.390.

Section 12. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) The Mine Safety and Health Administration Certificate of Training form 5000-23, January 1999; and

(b) Mine Emergency Technician Recertification Form EF-16, April 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Division of Mine Safety[~~Office of Mine Safety and Licensing~~], 300 Sower Boulevard, Frankfort, Kentucky 40601.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes training requirements for mine emergency technicians.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards by which mine emergency technicians shall be trained, certified, and retrained.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 351 provides the department the authority to promulgate administrative regulations to establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This administrative regulation establishes training

requirements for mine emergency technicians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS Chapter 351.127(1) requires the department to establish standards by which mine emergency technicians shall be trained, certified, and retrained.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the Office of Mine Safety and Licensing as the agency that prescribes a series of written and practical skills examinations to be used by public and private entities and replaces it with Division of Mine Safety; reduces training class sizes to fifteen instead of thirty; and requires that the district office of the Division of Mine Safety be notified fourteen days prior to the commencement of any MET class.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation is necessary to provide the division appropriate notice to allow the division to observe classes being given. The amendment also reduces class size to provide more thorough instruction to attendees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by amending the notification requirements and reducing class sizes for mine emergency technicians.

(d) How the amendment will assist in the effective administration of the statutes: KRS Chapter 351.127(1) requires the department to establish standards by which mine emergency technicians shall be trained, certified, and retrained. These amendments reduces the class size for training and also requires notification allowing the division to oversee training being received by prospective mine emergency technicians.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any certified emergency medical technicians or mine emergency technicians or anyone who wishes to become a certified emergency medical technicians or mine emergency technician.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity that provides training for mine emergency technician classes will be required to reduce class sizes from 30 to 15 and provide the division notice 14 days prior to conducting trainings.

(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 a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit by receiving more input form the division related to trainings and with smaller class sizes can provide more in depth training.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. Certified emergency medical technicians or mine emergency technicians will be 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? The Department for Natural Resources, Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.101(1)(o); KRS 351.127; 351.182; 352.390

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(Amendment)

808 KAR 1:060. Automated teller machines.

RELATES TO: KRS 286.3-180, 286.5-061, 286.6-055

STATUTORY AUTHORITY: KRS 286.1-020, 286.5-702, 286.6-070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides for the use of an automated teller machine by a financial institution and specifies that an automated teller machine is not a branch <u>or service facility</u> of the financial institution.

Section 1. Definitions.

(1) "Financial institution" means a state [-]chartered bank, savings and loan association, or credit union.

Section 2. A financial institution may receive and act upon a communication from a customer transmitted through an automated teller machine. The communication may:

(1) Request the withdrawal of funds either from the customer's deposit account or from a previously authorized line of credit;

(2) Instruct the institution to receive funds or to transfer funds for the customer's benefit;

(3) Make a balance inquiry;

(4) Instruct the financial institution to receive cash or a check; or

(5) Request the financial institution to dispense cash to the customer at the location of the automated teller machine.

Section 3. A transaction initiated by an automated teller machine shall be subject to verification by the financial institution.

Section 4.[~~The commissioner may require information from a financial institution concerning the operation of an automated teller machine or other information that the commissioner believes to be in the public interest.~~

~~Section 5.~~] A financial transaction effected by use of an automated teller machine shall be deemed to be transacted at the institution and not at the automated teller machine. The automated teller machine shall not be considered to be a branch,[~~or~~] branch office, or service facility.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the use of an automated teller machine by a financial institution and specifies that an automated teller machine is not a branch of the financial institution.

(b) The necessity of this administrative regulation: This administrative regulation offers clarification and guidance to effected financial institutions and the industry in general by establishing the parameters and treatment of automated teller transactions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020 authorizes the commissioner to promulgate, amend, and repeal any administrative regulations necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.1-011 authorizes the Department of Financial Institutions to exercise all administrative functions of the state in relation to the regulation and supervision of banks. KRS 286.5-702 authorizes the commissioner to issue administrative regulations to carry out the provisions of KRS 286.5 governing savings and loan associations. KRS 286.6-070 authorizes the Department of Financial Institutions to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will continue to provide clarification and explanation to the industry and general public regarding the use of automated teller machines by financial institutions.

(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 streamlines and clarifies the existing regulation by deleting unnecessary and potentially confusing specifications.

(b) The necessity of the amendment to this administrative regulation: The amendment promotes compliance by streamlining the regulatory framework and eliminating unnecessary, potentially confusing provisions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.1-020, 286.1-011, 286.5-702 and 286.6-070.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will eliminate unnecessary, potentially confusing provisions while continuing to provide required guidance on the parameters and treatment of automated teller transactions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While this regulation will continue to impact the 143 state-chartered financial institutions subject to its provisions, it will have no material change on any of their regulatory obligations.

(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 change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this regulation will provide additional opportunities for financial institutions to provide products and services to consumers.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No additional funding will be required for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

be impacted by this administrative regulation? The Kentucky Department of Financial Institutions will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020, 286.1-011, 286.5-702 and 286.6-070.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue 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 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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institution
(Amendment)

808 KAR 1:140. Fees[~~Bank annual assessment fee~~].

RELATES TO: KRS 286.3-010, 286.3-020, 286.3-050, 286.3-095, 286.3-135, 286.3-140, 286.3-145, 286.3-146, 286.3-170, 286.3-172, 286.3-174, 286.3-180, 286.3-185, 286.3-450, 286.3-480, 286.3-530, 286.3-820, 286.3-920, 286.6-100

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.3-145, 286.3-146, 286.3-480(1)(b), 286.6-100(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to promulgate administrative regulations to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.3-145 and 286.3-146 authorize the commissioner to prescribe filing fees for trust companies that want to establish or acquire and maintain a trust office or trust representative office. KRS 286.3-480 requires the commissioner to establish fees for certain investigations, applications, examination of assets, and extraordinary services performed for any financial institution. This administrative regulation establishes the fees for such services. KRS 286.3-480(1)(b) provides that each state bank shall pay an annual assessment based on the assets of the bank or branch. This administrative regulation establishes the schedule of fees for a state bank. KRS 286.6-100(1)(d) establishes that each credit union subject to supervision and examination by the commissioner shall pay an annual fee to the commissioner based on the assets of the credit union and any fees for extraordinary services performed by the department for a particular credit union. This administrative regulation establishes the fees for such services.

Section 1. Definitions.

(1) "Applicant" means a person or institution submitting a written application, plan, or notice pursuant to KRS Chapter 286.3.

(2) "Extraordinary services performed" means:

(a) Review of a request for approval of a change of control made pursuant to KRS 286.3-095(1), unless the request was made concurrently with an application made pursuant to KRS 286.3-905; or

(b) A special examination.

(3) "Institution" means an institution that is subject to examination pursuant to KRS 286.3-450 or KRS 286.3-530.

(4) "Special examination" means:

(a) An abbreviated on-site review conducted to determine an institution's progress in achieving compliance with laws, administrative regulations, or a formal or informal enforcement action to address unsafe and unsound banking practices;

(b) An off-site review of progress reports submitted by an institution to the commissioner in conjunction with a formal or informal enforcement action; or

(c) A second examination conducted within the twenty-four (24) month timeframe set forth in KRS 286.3-450(1) that results from an institution failing to comply with laws or administrative regulations relating to banks or trust companies or from an institution engaging in unsafe and unsound banking practices.

Section 2. Hourly Examination Fees. The hourly fee for each examiner conducting an examination or investigation of a department licensee or chartered institution shall be fifty-five ($55) dollars and, in some instances, may also include additional reasonable costs incurred.

Section 3. Determination of Bank Assets Subject to Assessment.

(1) Each[~~A~~] state chartered bank shall pay an annual assessment fee to the department[~~according to the schedule established in Section 2 of this administrative regulation~~] based on its assets as reported on[~~to the office as of~~] the 31st day of December of the previous calendar year.

(2) The assets subject to the annual assessment shall not include assets held by the bank or branch in a fiduciary capacity.

(3) The annual assessment shall be paid by April 1, unless the department and bank agree in writing to a later date due to extraordinary circumstances.

Section 4[~~2~~]. Bank Assessment Fee Schedule.

BANK ASSESSMENT FEE SCHEDULE

If the amount of total assets is:		Assessment shall be:		
Over	But Not Over	This Amount	Plus	Of Excess Over
$0	$2 Million	$0	$0.001	$0
$2 Million	$25 Million	$2,000	$0.00012	$2 Million
$25 Million	$50 Million	$4,760	$0.000055	$25 Million
$50 Million	$75 Million	$6,135	$0.000045	$50 Million
$75 Million	$100 Million	$7,260	$0.00004	$75 Million
$100 Million	$125 Million	$8,260	$0.000035	$100 Million
$125 Million	$150 Million	$9,135	$0.00003	$125 Million
$150 Million	$175 Million	$9,885	$0.000025	$150 Million
$175 Million	$200 Million	$10,510	$0.00002	$175 Million
$200 Million	$500 Million	$11,010	$0.000019	$200 Million
$500 Million	$1,000 Million	$16,710	$0.0000185	$500 Million
$1,000 Million		$25,960	$0.000018	$1,000 Million

Section 5. Bank-related Services. An applicant or institution shall pay the department a fee for the services identified in the following table:

Service	Fee
Review of application submitted pursuant to KRS 286.3-020	$5,000, plus the hourly fee established in Section 1 of this administrative regulation for each examiner that conducts an investigation of the applicant.
Review of application submitted pursuant to KRS 286.3-135	$5,000, plus the hourly fee established in Section 1 of this administrative regulation for each examiner that conducts an investigation of the applicant.

Review of plan submitted pursuant to KRS 286.3-172	$5,000, plus the hourly fee established in Section 1 of this administrative regulation for each examiner that conducts an investigation of the applicant.
Review of amendments submitted pursuant to KRS 286.3-050(4) if at least one (1) amendment is being made pursuant to KRS 286.3-140(1)	$1,000
Review of amendments submitted pursuant to KRS 286.3-050(4) if none of the amendments are being made pursuant to KRS 286.3-140(1)	$250
Review of application required pursuant to KRS 286.3-180 unless the application is being made concurrently with an application required pursuant to KRS 286.3-920(2)	$500
Review of application required pursuant to KRS 286.3-820	$500
Review of application required pursuant to KRS 286.3-920(2) or 286.3-920(3) unless the application is being made concurrently with an application required pursuant to KRS 286.3-905	$2,500
Review of notice required pursuant to KRS 286.3-145(4)	$500
Review of notice required pursuant to KRS 286.3-145(5) or 286.3-146(4)	$1,000
Review of application required pursuant to KRS 286.3-185	$500
Examination conducted pursuant to KRS 286.3-480(1)(c)	The hourly fee established in Section 1 of this administrative regulation for each examiner that conducts the examination.
Extraordinary services performed	The hourly fee established in Section 1 of this administrative regulation for each examiner that conducts the review or special examination.

Section 6. Payment Terms.

(1) Except for hourly fees, a fee shall be paid by the applicant at the time a written application, plan, or notice is made.

(2) An hourly fee shall be paid within thirty (30) days of the date a fee invoice is transmitted to the applicant or institution.

(3) Except for clerical errors, a fee paid pursuant to this administrative regulation shall be nonrefundable.

Section 7. Credit Unions. Each state-chartered credit union shall pay an annual assessment fee to the department, based on the assets reported on December 31 of the previous calendar year.

(2) The annual assessment fee shall be paid by April 1.

(3) The annual assessment fee schedule shall be as follows:

If the amount of total assets is:		Assessment shall be:		
Over	But Not Over	This Amount	Plus	Of Excess Over
$0	$2 Million	$1,032.50	$0.00045	$1 Million
$2 Million	$5 Million	$1,482.50	$0.0003	$2 Million
$5 Million	$20 Million	$2,382.50	$0.00015	$5 Million
$20 Million	$50 Million	$4,632.50	$0.00013	$20 Million
$50 Million	$100 Million	$8,532.50	$0.0001	$50 Million
$100 Million		$11,532.50	$0.00005	$100 Million

Section 8. (1) A check casher licensee shall pay the examination fee established in Section 2 of this administrative regulation within thirty (30) days of the date of billing. The date of billing shall be the date the bill was deposited in the mailroom at the department for delivery through the United States Mail.

(2) If the fee is not paid within the thirty (30) day time period, the office shall send the licensee a notice of failure to pay the examination fee and demand for immediate payment.

(3) If the licensee does not pay the examination fee within thirty (30) days from the date of receipt of the notice of failure to pay the examination fee and demand for immediate payment, the licensee shall be:

(a) Subject to the penalties established in KRS 286.9-110; and

(b) Remain liable for the payment of all owed examination fees.

Section 9. (1) A mortgage loan company or mortgage loan broker shall pay the fee established in Section 1 of this administrative regulation within thirty (30) days of the date of the fee bill sent following the examination or investigation.

(2) If the fee is not paid within the thirty (30) day time period, the department shall send the mortgage loan company or mortgage loan broker a notice of failure to pay the fee and a demand for immediate payment.

(3) If the mortgage loan company or mortgage loan broker does not pay the fee within thirty (30) days from the date of demand for immediate payment, the mortgage loan company or mortgage loan broker and its control persons shall:

(a) Be subject to the penalties established in KRS 286.8-090 and 286.8-046;

(b) Remain liable for the payment of all owed fees; and

(c) Be subject to administrative action by the department and on its behalf.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes all the fees for licensees of the Department of Financial Institutions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide clarity to licensees regarding the costs of supervision by the Department of Financial Institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) authorizes the commissioner to promulgate administrative regulations to interpret

and carry out the provisions and intent of KRS Chapter 286. This administrative regulation further establishes the fees authorized by KRS 286.3-145, 286.3-146, 286.3-480, and 286.6-100(1)(d).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to provide clarity and consistency regarding fees charged by the Department of Financial Institutions. It will facilitate compliance by licensees and compliance checks by the Department of Financial Institutions by streamlining and clarifying fee requirements and expectations.

(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 relocates and consolidates all regulatory fee provisions relating to the Department's Depository and Nondepository divisions into one regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment promotes compliance by organizing applicable fee provisions more logically and efficiently.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.1-020(1), 286.3-145, 286.3-146, 286.3-480, and 286.6-100(1)(d).

(d) How the amendment will assist in the effective administration of the statutes: The amendment streamlines and consolidates all statutorily authorized fees assessed by the Department' Depository and Nondepository divisions into one collective regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While this amendment will centralize and relocate the fee provisions of all entities supervised by the Department's Depository and Nondepository divisions, it will have no substantive impact the amount or payment of such fees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: While they will continue to be required to pay fees to the Department for supervision of their industries, this amendment will not amend any fees or require any change or addition to the compliance requirements of any regulated entity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): While the regulated entities will continue to be required to pay fees to the Department for supervision of their industries, this amendment will not amend any fees or require any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will benefit from a more logically and efficiently organized regulatory framework.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No additional funding will be required for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: While this amendment consolidates and more logically organizes existing fee provisions, it does not establish any new or different fees, or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020(1), 286.3-145, 286.3-146, 286.3-480, and 286.6-100(1)(d).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue this administrative regulation generates will depend on the number of licensees, registrants and chartered institutions, and the extent of services provided to those entities. Based on current licensee numbers and recent experience, the administrative regulation will likely generate $2,484,000 in the first year. However, because no change in fees is occurring through this amendment, no new revenue will be realized through its enactment.

(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 amount of revenue this administrative regulation generates will depend on the number of licensees, registrants and chartered institutions, and the extent of services provided to those entities. Based on current licensee numbers and recent experience, the administrative regulation will likely generate $2,484,000 in subsequent years. However, because no change in fees is occurring through this amendment, no new revenue will be realized through its enactment.

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: While this administrative regulation will impose fees on the regulated entities, it creates no change in the overall amount of fees they are currently being charged through the existing organizational structure. The amendment therefore culminates in a revenue neutral net result.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 3:050. Conduct <u>of credit unions</u>.

RELATES TO: KRS <u>286.6-095,</u> 286.6-100, 286.6-225, 286.6-585, 286.6-715, 12 U.S.C. 704, 20 U.S.C. 1071

STATUTORY AUTHORITY: KRS 286.1-020, KRS 286.6-070, KRS 286.6-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.6-070 authorizes the Department of Financial Institutions to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This administrative

regulation establishes requirements to ensure the proper conduct of credit unions.

Section 1. Definition. A "corporate credit union" means a credit union that:

(1) Is operated primarily for the purpose of serving other credit unions;

(2) Is designated by the National Credit Union Administration as a corporate credit union; and

(3) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Section 2. Refund of Interest. When an interest refund is authorized by the board of directors under KRS 286.6-225(3), it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section 3.[~~Credit Union Annual Assessment Fee. Each state-chartered credit union shall pay an annual assessment fee to the department based on the assets of the credit union. (1) Pursuant to KRS 286.6-100, the annual assessment fee shall be based on the assets reported to the department on December 31 of the previous calendar year.~~

~~(2) The annual assessment fee shall be paid by April 1.~~

~~(3) The annual assessment fee schedule shall be as follows:~~

~~If the total amount of assets equals:~~	~~The annual assessment fee shall be:~~
~~$0 to $2,000,000~~	~~$1032.50 plus $0.45 for each $1,000 of assets over $1,000,000~~
~~$2,000,001 to $5,000,000~~	~~$1,482.50 plus $0.30 for each $1,000 of assets over $2,000,000~~
~~$5,000,001 to $20,000,000~~	~~$2382.50 plus $0.15 for each $1,000 of assets over $5,000,000~~
~~$20,000,001 to $50,000,000~~	~~$4,632.50 plus $0.13 for each $1,000 of assets over $20,000,000~~
~~$50,000,001 to $100,000,000~~	~~$8,532.50 plus $0.10 for each $1,000 of assets over $50,000,000~~
~~Over $100,000,000~~	~~$11,532.50 plus $0.05 for each $1,000 of assets over $100,000,000~~

~~Section 4.~~] Fidelity Bond.

(1) The minimum blanket fidelity bond required by KRS 286.6-225(2) shall be as follows:

Assets	Minimum Bond
$0 to $10,000	Amount equal to the credit union's assets
$10,001 to $1,000,000	$10,000 for each $100,000 or fraction thereof
$1,000,001 to $50,000,000	$100,000 plus $50,000 for each million or fraction thereof over $1,000,000
$50,000,001 to $295,000,000	$2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000
Over $295,000,000	$5,000,000

(2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year to ascertain its adequacy.

Section 4[~~5~~]. Stocks and Bonds. A credit union may invest a maximum of five (5) percent of members'[~~members~~] shares in:

(1) Stock of a corporation rated A+ by[~~in the current issue of~~] Standard and Poor's[~~Poore's Corporation Security Owners Stock Guide~~] at the date of acquisition of the stock; and

(2) A corporate bond rated AAA or higher by[~~in the current issue of~~] Standard and Poor's[~~Poore's Corporation Bond Guide~~], or rated AAA by[~~in the current issue of~~] Moody's[~~Bond Record~~] at the date of acquisition of the bond.

Section 5. State-chartered credit unions may invest their funds in any investment which is permissible for a federally chartered credit union.

Section 6. Risk Asset. For the purpose of establishing the regular reserve, an asset shall be a risk asset except for the following:

(1) Cash on hand;

(2) A share or deposit in a federally or state-insured bank, savings and loan association, or credit union that has a remaining maturity of five (5) years or less;

(3) An asset, including a collateralized mortgage obligation that is comprised of government guaranteed mortgage loans, that has a remaining maturity of five (5) years or less and is insured by, is fully guaranteed as to principal and interest by, or is due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association;

(4) A loan to another credit union that has a remaining maturity of five (5) years or less;

(5) A student loan that has a remaining maturity of five (5) years or less and that is insured under the provisions of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs;

(6) A loan that has a remaining maturity of five (5) years or less and that is fully insured or guaranteed by the federal or a state government or any agency of either;

(7) A share or deposit in a corporate credit union that has a remaining maturity of five (5) years or less, other than a Membership Capital Share Deposit account as defined in 12 U.S.C. 704;

(8) A common trust investment, including a mutual fund, which deals exclusively in investments authorized by the Federal Credit Union Act that are either carried at the lower cost or market, or are marked to market value monthly;

(9) A prepaid expense;

(10) Accrued interest on a non-risk investment;

(11) A loan fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) A loan purchased from a liquidating credit union and guaranteed by the National Credit Union Administration;

(13) A National Credit Union Share Insurance Fund Guaranty Account established with the authorization of the National Credit Union Administration under the authority of Section 203(a)(1) of the Federal Credit Union Act;

(14) An investment in shares of the National Credit Union Administration Central Liquidity Facility;

(15) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section with a maturity greater than five (5) years, is not a risk asset if the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly;

(16) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section, with a remaining maturity of greater than five (5) years, is not a risk asset, whether or not the asset is being carried on the credit union's records at the lower of cost or market or is being marked to market value monthly, provided the asset meets the criteria established in paragraphs (a) through (c) of this subsection.

(a) The interest rate shall be reset at least annually.

(b) The interest rate of the instrument shall be less than the maximum allowable interest rate for the instrument on the date of the required reserve transfer.

(c) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index;

(17) A fixed asset that includes an office, branch office, suboffice, service center, parking lot, or real estate in which the credit union transacts or will transact business; and office furnishing, office machine, computer hardware and software, automated terminal, and heating and cooling equipment; and

(18) A deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one (1) percent of insured shares.

Section 7. Charitable Contribution. Only the board of directors

shall have the power to[~~only~~] authorize a contribution to a civic, charitable, or service organization.

Section 8. Conversion. A state-chartered credit union may convert to another charter.

(1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the proposed conversion shall be given to all members, which shall include a statement including the reasons for the proposed conversion. The notice shall be mailed to the last known address or hand delivered to the members. The notice shall state the date and place for the[~~this~~] meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.

(2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion, in person or by absentee ballot if the bylaws of the credit union allow voting by absentee ballot.

(3) A statement of the results of the vote, verified by the president and secretary, shall be filed with the commissioner.

(4) The commissioner shall issue an order to the effect that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements to ensure the proper conduct of credit unions and authorizes state-chartered credit unions to exercise the same investment authority as is conferred upon federal credit unions.

(b) The necessity of this administrative regulation: This administrative regulation provides the credit union industry and general public guidance and direction on: (a) interest refund accounting under KRS 286.6-225(3); (b) fidelity bonds required by KRS 286-225(2); (c) permissible investments; (d) establishment of reserves; (c) charitable contributions; and (f) charter conversions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020 authorizes the commissioner to promulgate, amend, and repeal any administrative regulations necessary to interpret and carry out the provisions and intent of this KRS Chapter 286. KRS 286.6-070 authorizes the Department of Financial Institutions to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. KRS 286.6-100 places credit unions under the supervision of the commissioner. Under KRS 286.6-095 the commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions, if the commissioner deems it reasonably necessary for the well-being of such credit unions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will continue to provide clarification and explanation to the statutorily enumerated powers, requirements and limitations of credit unions.

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

(a) How the amendment will change this existing administrative regulation: The amendment will consolidate, streamline and more logically organize existing regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to enhance regulatory compliance of state-chartered credit unions through a more streamlined and better organized regulatory framework.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.1-020, 286.6-070 and 286.6-100.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide clarification and explanation to the statutorily enumerated powers, requirements and limitations of credit unions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While this regulation, which improves the logical and convenient organization of the controlling regulatory framework, will continue to impact the 22 state-chartered credit unions in Kentucky, it will have no material change on any of their regulatory obligations.

(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 not require any change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to benefitting from the increased convenience and efficiencies offered through consolidation and reorganization, this regulation will retain all the compliance benefits offered by the original regulations.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No additional funding will be required for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020, 286.6-070, 286.6-100 and 286.6-095.

(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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(Amendment)

808 KAR 6:095.[~~Place of business; hours.~~] Mandatory availability for repayment.

RELATES TO: KRS 286.4-460, 286.4-490

STATUTORY AUTHORITY: KRS 286.4-610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations to enforce the provisions of KRS 286.4. This administrative regulation serves to promote the proper conduct of business pursuant to KRS Chapter 286.4 by requiring minimum time frames during which the general public shall have[~~in relation to~~] access to consumer loan company licensee places of[~~such~~] business[~~by the general public~~].

Section 1. Every licensee shall maintain a place of business to which the general public shall have free access and where all obligations entered into shall be payable. For the purposes of doing business with the general public, the acceptance of payments from borrowers and to permit the commissioner[~~executive director~~] or any person designated by the commissioner[~~and his representatives~~] to examine the books, accounts, records and files of licensees and to enter complaints, each licensed office shall be open not less than four (4) consecutive hours between 8 a.m. and 6 p.m. on any four (4) days of each week, except legal holidays generally observed in the community in which the licensed office is located.

CHARLES A. VICE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires consumer loan businesses licensed by the Department to have an office that is open to the public not less than four (4) consecutive hours between 8 a.m. and 6 p.m. on any four (4) days of the week.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to require consumer loan businesses to provide hours during which debtors can make payments and regulators can examine records in person.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.4-610(1) authorizes the commissioner to promulgate regulations to enforce the provisions of KRS 286.4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation serves to promote the proper conduct of business pursuant to KRS Chapter 286.4 by requiring minimum time frames for access to consumer loan company licensee places of business by the general public.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the title of the Executive Director to Commissioner, reflecting the change made through a prior statutory amendment. It also adds language permitting the commissioner's designated representatives to examine the books, accounts, records and files of licensees.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect changes to the structure of the Department of Financial Institutions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.4-610(1).

(d) How the amendment will assist in the effective administration of the statutes: Through the additional language providing examination authority for the commissioner's designated representative, this amendment clarifies the department's authority and insures its ability to properly regulate its licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will continue to impact the

382 consumer loan licensees currently 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: Regulated consumer loan licensees will be required to ensure their physical locations are open, at a minimum, for the number of hours established in this administrative regulation. While the amended updating language of the regulation will be applicable to all consumer loan licensees, it will have no material impact on any of their regulatory obligations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated consumer loan licensees will have staffing costs at their physical locations. However, this amended administrative regulation does not establish any new requirements, and the licensees have a vested interest in opening so customers can complete payments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated consumer loan licensees will continue to receive payments from customers during the hours they are required to be open because of this administrative regulation.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is no ongoing cost 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: This administrative regulation does not require additional funding to implement and enforce.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies to all licensees 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 Financial Institutions will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.4-610(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 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 amendment 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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(Amendment)

808 KAR 9:010. Deferred deposit database compliance[~~Administration and enforcement of KRS 286.9-140 to ensure that check cashers do not violate the law against multiple transactions in excessive amounts by a customer~~].

RELATES TO: KRS 286.9-010(6), 286.9-075, 286.9-100(1), (7), (9), (10), (18), (19), 286.9-140

STATUTORY AUTHORITY: KRS 286.9-090(1), 286.9-100, 286.9-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-100(9) prohibits licensees from having more than two (2) deferred deposit transactions from any one (1)[~~a~~] customer at any one (1)[~~a~~] time and limits[~~.~~] the total proceeds received by a customer from all deferred deposit transactions to[~~from all licensees shall not exceed~~] $500[~~at any one (1) time~~]. KRS 286.9-140(1) requires[~~directs~~] the commissioner to implement a common database with real-time access through an internet connection accessible to the department and licensees[~~a licensee~~] to verify whether any deferred deposit transactions are outstanding for a particular person and[~~, which in addition to the general grant of authority in KRS 286.9-090(1),~~] authorizes the commissioner to adopt rules[~~promulgate an administrative regulation~~] to administer and enforce KRS 286.9-140. This administrative regulation establishes requirements for[~~a~~] licensee use of[~~to ensure that~~] the database established pursuant to KRS 286.9-140[~~is used by licensees in accordance with KRS Chapter 286.9~~].

Section 1. Definitions. The following shall be additional definitions of "closed" or "close" under KRS 286.9-010(6)(e):

(1) The customer's payment instrument was unpaid and the licensee has sold the underlying debt to a non-affiliated third party without recourse;

(2) The underlying debt represented by the customer's payment instrument has been discharged in bankruptcy;

(3) The database provider has designated the deferred deposit transaction concerning the customer's payment instrument as closed pursuant to KRS 286.9-140(7); or

(4) The licensee has reported to the database provider that the deferred deposit transaction concerning the customer's payment instrument is closed following being held open pursuant to KRS 286.9-140(7).

Section 2. Deferred Deposit Database Requirements.

(1) A licensee shall institute procedures and maintain an accounting system[~~that is~~] designed to:

(a) Prevent the licensee from entering into transactions with a customer in violation of KRS 286.9-100(9), including procedures for:

1. Maintaining a record of all current transactions with the licensee; and

2. Checking the record of current transactions with the database prior to issuance of a new transaction; and

(b) Generate reports that will readily permit examination and verification of compliance with KRS 286.9-100(9), KRS 286.9-140, and this section by department examiners.

(2) For each deferred deposit transaction, a licensee shall

submit[~~In addition to the data listed in KRS 286.9-140(1), licensees shall submit the following data to the database for each deferred deposit transaction~~]:

(a) The customer's date of birth;

(b) The check number of the payment instrument;

(c) The database verification fee charged to the customer, if any;

(d) The service fee charged to the customer; and

(e) The date the payment instrument was deposited or otherwise presented for payment.

(3) A licensee shall not cause a closed deferred deposit transaction to be reopened in the database unless[~~all of the following conditions are satisfied~~]:

(a) The deferred deposit transaction was closed by reason of clerical error by the licensee;

(b) The licensee causes the deferred deposit transaction to be reopened on or before the close of business on the business day after the transaction was closed; and

(c) Reopening the transaction would not cause the consumer to exceed the transaction limits set forth in KRS 286.9-100(9).

(4) A licensee shall not accept, collect, or seek payment on a deferred deposit transaction that is designated as closed in the database.

(5) A licensee that has reported to the database provider that a deferred deposit transaction is open beyond the maturity date pursuant to KRS 286.9-140(7) shall immediately notify the database provider when the transaction becomes closed.

(6)[~~(a) Except as provided in paragraph (b) of this subsection, each licensee shall achieve compliance with this administrative regulation within sixty (60) days of the effective date of this administrative regulation. (b) After the sixty (60) day period established in paragraph (a) of this subsection,~~] A new licensee or an existing licensee applying for an additional location[~~,~~] shall establish an account with the database provider for each location prior to[~~demonstrate the ability to immediately comply with this administrative regulation at~~] the time of application.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for licensee use of the common database with real-time access established pursuant to KRS 286.9-140.

(b) The necessity of this administrative regulation: This regulation directs the actions licensees must take in connection with the real-time database to ensure the protections to borrowers established in KRS 286.9-100 are fully and consistently provided.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this subtitle. KRS 286.9-140(1) authorizes the commissioner to adopt rules, set forth in this regulation, to administer and enforce the provisions of that statute as well as the consumer protections established in KRS 286.9-100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the substantive database requirements of licensees mandated by the statutory consumer protections employed in deferred deposit transactions.

(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 streamlines the description of the applicable rules and requirements, and eliminates obsolete references to dated occurrences that have already passed. It also updates the title of the administrative regulation for accuracy, and clarifies that applicants and licensees seeking an additional location must demonstrate the ability to comply with the administrative regulation at the time of their application, by establishing an account with the database provider.

(b) The necessity of the amendment to this administrative regulation: This amendment updates this regulation by deleting references to outdated and obsolete occurrences and reduces potential confusion by clarifying language of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.9-090(1) and KRS 286.9-140(1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will facilitate compliance by eliminating outdated references and reducing potential confusion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While the amended updating language of the regulation will be applicable to all 437 licensees, it will have no material change on any of their regulatory obligations.

(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 change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will retain all the compliance benefits offered by the original regulation.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No funding will be required for the implementation and enforcement of 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 increased any fees: This amendment does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.9-090(1), 286.9-100, 286.9-140.

(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 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 amendment 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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(Amendment)

808 KAR 9:040.[~~Limitation on electronic fund transfers from~~] Customer account transfers[~~accounts~~].

RELATES TO: KRS 286.9-010, 286.9-100

STATUTORY AUTHORITY: KRS 286.9-090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-090 authorizes the commissioner[~~Office of Financial Institutions~~] to promulgate administrative regulations for the enforcement of subtitle KRS 286.9[~~-010 to 286.9-120~~]. This administrative regulation establishes that licensees may only use electronic debits of customer accounts in collection efforts if there is nonpayment by the customer's bank or other financial institution of the customer's check[~~requirements for deferred deposit transactions~~].

Section 1. In connection with a deferred deposit transaction, a licensee shall deposit or present for payment a customer's actual check to the customer's bank or other financial institution unless that check is redeemed or bought back by the customer.

Section 2. Upon[~~If there is~~] nonpayment by the customer's bank or other financial institution of the customer's physical[~~actual~~] check, a licensee may use electronic debits of customer accounts in its collection efforts.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone: (502) 573-3390, Fax: (502) 573-8787; Email: KDFI.Regs@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes that licensees may use electronic debits of customer accounts in collection efforts only if there is nonpayment by the customer's bank or other financial institution of the customer's check.

(b) The necessity of this administrative regulation: This regulation provides protections to borrowers relating to repayment and collections methods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.9-090 authorizes the commissioner to promulgate administrative regulations for the enforcement of subtitle KRS 286.9.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation helps strike the desired balance between enabling and promoting the extension of credit to an underserved segment of the population and providing necessary repayment and collection protections to borrowers receiving loans under this statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the regulation to better correspond to statutory changes enacted since the regulation became effective and updates the language to clarify that any efforts to use electronic debits prior to nonpayment of a customer's check are prohibited.

(b) The necessity of the amendment to this administrative regulation: This amendment updates references to outdated and revised statutory provisions and more precisely describes the regulation's function.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.9-090.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will facilitate compliance by clarifying language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While the amended language of this

regulation will be applicable to all 437 deferred deposit licensees, it will have no material impact on any of their regulatory obligations.

(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 change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will retain all the compliance benefits offered by the original regulation.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no continuing cost 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: No funding will be required for the implementation and enforcement of 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 increased any fees: This amendment does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.9-090.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment 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 amendment 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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(Amendment)

808 KAR 9:050. Licensee change of control[~~Required forms, procedures, and fees for applicants and licensees~~].

RELATES TO: KRS 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-070, 286.9-071, 286.9-073, 286.9-080, 286.9-104

STATUTORY AUTHORITY: KRS 286.9-050, 286.9-060, 286.9-070, 286.9-090(1), 286.9-104

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form of and the filing procedures for an application for a license under KRS Chapter 286.9 and the information and documents that must be submitted to the commissioner with an application for a license. KRS 286.9-070 requires licensees to file a written request for a change of control and to pay the cost incurred by the commissioner in investigating the change of control request.[~~KRS 286.9-104 requires the commissioner to promulgate an annual report form and to prescribe certain information that must be submitted.~~] This administrative regulation establishes the required[~~forms, information, documents, fees, and~~] filing procedures for change of control by check cashing licensees[~~and applicants proceeding pursuant to these statutes~~].

Section 1.[~~Definitions.~~

~~(1) "Applicant" is defined by KRS 286.9-010(2).~~

~~(2) "Check casher license" means a license issued pursuant to KRS Chapter 286.9 to engage in a combined business, which includes both of the following:~~

~~(a) The business of cashing checks; and~~

~~(b) The business of accepting deferred deposit transactions.~~

~~(3) "Commissioner" is defined by KRS 286.9-010(16).~~

~~(4) "Licensee" is defined by KRS 286.9-010(18).~~

~~(5) "Limited check casher license" means a license issued pursuant to KRS Chapter 286.9 to engage in the business of cashing checks.~~

~~(6) "Person" is defined by KRS 286.9-010(22).~~

~~Section 2.~~] Pursuant to the moratorium on the deferred deposit service business license in KRS 286.9-071, a license issued prior to July 2, 2009, shall be a check casher license.

Section 2.[~~3. Application for Limited Check Casher License. A person applying for a limited check casher license shall complete and submit the following:~~

~~(1) Form LCC-1, Application for Limited Check Casher License with all required attachments;~~

~~(2) The nonrefundable investigation fee established in KRS 286.9-060(1);~~

~~(3) If the applicant has a license, registration, or claim of exemption related to the financial services industry in any other state, a Form COMB-1, State License Confirmation Form for Check Casher License or Limited Check Casher License;~~

~~(4) An audited financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles dated as of the previous year end. A financial statement shall include a balance sheet, income statement, a statement of cash flows, and all notes. If the applicant is a start-up company, an initial statement of condition and a pro-forma income statement shall be submitted instead of the income statement and statement of cash flows;~~

~~(5) Evidence that the applicant has complied or will comply~~

~~with all workers' compensation and unemployment compensation laws of Kentucky; and~~

~~(6) One (1) of the following, which shall be deposited with and made payable to the commissioner:~~

~~(a) An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);~~

~~(b) An original corporate surety bond furnished by a surety company authorized to do business in Kentucky. The name of the principal insured on the bond shall match exactly the full legal name of the applicant. The bond shall be submitted on Form COMB-2, Surety Bond for Check Casher License or Limited Check Casher License, in an amount required by KRS 286.9-040(1)(b);~~

~~(c) Evidence that the applicant has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License; or~~

~~(d) A savings certificate of a federally insured financial institution in Kentucky established by the applicant that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License.~~

~~Section 4. Renewal Applications. A licensee applying for renewal of a check casher license or limited check casher license pursuant to KRS 286.9-080(1) shall complete and submit the following on or before June 20 of each year:~~

~~(1) Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments; an~~

~~(2) The nonrefundable license fee established in KRS 286.9-080(1).~~

~~Section 5. Reinstatement Applications. A licensee applying for reinstatement of a check casher license or limited check casher license pursuant to KRS 286.9-080(2) shall complete and submit the following prior to August 1 of the year that the renewal application was due~~

~~(1) Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments;~~

~~(2) The nonrefundable license fee established in KRS 286.9-080(1); and~~

~~(3) The nonrefundable late fee and reinstatement fee established in KRS 286.9-080(2).~~

~~Section 6. Annual Report. A licensee filing an annual report pursuant to KRS 286.9-104 shall complete and submit the following on or before March 1 of each year:~~

~~(1) Form COMB-5, KRS 286.9-104 Annual Report to the Department of Financial Institutions; and~~

~~(2) A financial statement for the previous calendar year prepared in accordance with generally accepted accounting principles. A financial statement shall include a balance sheet, income statement, and all notes.~~

~~Section 7.~~] Interpretation of KRS 286.9-030(3). A person shall be deemed principally engaged in the business of cashing checks and not principally engaged in the retail sale of goods or services at any particular location if the location's gross annual check cashing receipts exceed more than fifty (50) percent of the location's annual revenue.

Section 3[~~8~~]. Change of Control. A licensee requesting[~~making a request for~~] a change of control pursuant to KRS 286.9-070(5) shall[~~complete and~~] submit[~~the following~~]:

(1) A completed Change of Control form, COMB-6, accompanied by[~~Change of Control Request for Check Casher License or Limited Check Casher License with~~]all required attachments;

(2) A nonrefundable investigation fee of $500, if the person obtaining control of the licensee is not a licensee[~~, a nonrefundable investigation fee of $500~~];

(3) If the person obtaining control of the licensee has a license, registration, or claim of exemption related to the financial services industry in any other state, a Form COMB-1, State License Confirmation Form for Check Casher License or Limited Check Casher License for the person obtaining control of the licensee;

(4) An audited financial statement for the person obtaining control of the licensee prepared by a certified public accountant in accordance with generally accepted accounting principles as of the previous year end that includes:[~~. A financial statement shall include~~]

(a) A balance sheet;[~~,~~]

(b) Income statement;[~~,~~]

(c)[~~(a)~~] Statement of cash flows; and[~~,~~]

(d) All notes.

(5) If the person obtaining control of the licensee is a start-up company or new entity, an initial statement of condition and a pro-forma income statement shall be submitted instead of the income statement and statement of cash flows;

(5)[~~(6)~~] Evidence that the person obtaining control of the licensee has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(6)[~~(7)~~] One (1) of the following, which shall be deposited with and made payable to the commissioner:

(a) An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

(b) An original corporate surety bond furnished by a surety company authorized to do business in Kentucky. The name of the principal insured on the bond shall match exactly the full legal name of the person obtaining control of the licensee. The bond shall be submitted on Form COMB-2, Surety Bond for Check Casher License or Limited Check Casher License, in an amount required by KRS 286.9-040(1)(b);

(c) Evidence that the person obtaining control of the licensee has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License; or

(d) A savings certificate of a federally insured financial institution in Kentucky established by the person obtaining control of the licensee that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d), with an escrow agreement submitted on Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License.

Section 4[~~9~~]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a)[~~Form LCC-1, "Application for Limited Check Casher License", April 2016;~~

~~(b)~~] Form COMB-1, "State License Confirmation Form for Check Casher License or Limited Check Casher License", April 2016;

(b)[~~(c)~~]) Form COMB-2, "Surety Bond for Check Casher License or Limited Check Casher License", April 2016;

(c)[~~(d)~~]) FORM COMB-3, "Escrow Agreement for Check Casher License or Limited Check Casher License", April 2016;

(d)[~~(e) Form COMB-4, "Renewal Application for Check Casher License or Limited Check Casher License", April 2016;~~

~~(f) Form COMB-5, "KRS 286.9-104 Annual Report to the Department of Financial Institutions", April 2016; and~~

~~(g)~~] Form COMB-6, "Change of Control Request for Check Casher License or Limited Check Casher License", April 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained from the department's Web site at http://www.kfi.ky.gov.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required forms, information, documents, fees, and filing procedures for licensees and applicants requesting a change of control pursuant to KRS 286.9-070.

(b) The necessity of this administrative regulation: This administrative regulation sets forth necessary guidance relating to required forms, information, documents, fees, and filing procedures for requests for a change of control.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-070 requires licensees to file a written request for a change of control and to pay the cost incurred by the commissioner in investigating the request.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It informs check cashing and deferred deposit applicants and licensees of applicable requirements and obligations.

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

(a) How the amendment will change this existing administrative regulation: This proposed amendment eliminates the initial, renewal, and reinstatement provisions regarding licenses, whose necessary substantive provisions are all being moved to 808 KAR 1:170 for administrative efficiency. This proposed amendment also eliminates the annual reporting requirements, which are being moved to 808 KAR 14:020 as part of the Department's comprehensive regulation regarding reporting by all Department licensees.

(b) The necessity of the amendment to this administrative regulation: This proposed amendment will streamline and more logically organize information common and applicable to Department-wide applicants and licensees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.9-090(1) and 286.9-070.

(d) How the amendment will assist in the effective administration of the statutes: Applicants and licensees under KRS 286.9 will benefit from the improved and streamlined organizational structure created by the amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While this amended organization of the regulation will be applicable to all 440 check casher and deferred deposit licensees, it will have no material impact on any of their regulatory obligations.

(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 change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will retain all the compliance benefits offered by the original regulation.

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

(a) Initially: There will be no initial cost to implement this regulation.

(b) On a continuing basis: There will be no continuing cost 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: No funding will be required for the implementation and enforcement of 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:

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: No increase in fees or funding will be necessary to implement this amendment. This amendment does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.9-090(1), 286.9-050, 286.9-060, 286.9-070, and 286.9-104.

(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 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 amendment 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 will be no cost to administer the program for the first year.

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

subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None. While this amending regulation deletes check casher application requirements, which include related fees collected by the department, those provisions are being repromulgated as part of a new administrative regulation in 808 KAR Chapter 1:170 addressing licensing and registration of all of the department's regulated entities. This amendment, therefore, is ultimately revenue neutral.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(Amendment)

808 KAR 12:050.[~~Regulation of charges for services rendered in~~] Processing and closing charges for real estate loans to consumers.

RELATES TO: KRS 286.8-120(1), (2), (6)

STATUTORY AUTHORITY: KRS 286.8-140, 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-120(1) and (2) authorize a mortgage loan company to require a borrower to pay all necessary and reasonable expenses incurred in connection with a loan and all other necessary and incidental services rendered by the mortgage loan company or others. This administrative regulation requires the disclosure of fees paid, prohibits markups on certain services[~~, allows a maximum markup on certain payment services~~], and requires disclosure of ownership and control.

Section 1. All fees paid to or collected by a mortgage loan company or a mortgage loan broker in connection with a mortgage loan shall be disclosed as being paid to the mortgage loan company or mortgage loan broker, or lender on the closing disclosure[~~settlement statement~~] for the mortgage loan. The disclosure shall clearly and unambiguously disclose the identity of the recipient of each fee.

Section 2. (1)(a) A mortgage loan company or mortgage loan broker shall not mark up the cost of services performed or goods provided by another settlement service provider if no work, nominal work, or duplicative work is performed.

(b) Services that may not be marked up shall include:

1. Appraisal fees;
2. Surveyor fees; and
3. Credit reporting fees.

(2) The following fees may be paid by the lender:

(a) Premiums to loan companies and brokers; and

(b) Yield spread premiums to loan companies and brokers.[~~(3)(a) Fees paid for establishing a loan repayment program where payments are made more often than once per month may be marked up by a maximum of $600 over the actual direct cost of the service.~~

~~(b) The actual direct cost shall be the exact cost charged by a third-party provider and shall not include overhead expenses or allocations of staff salaries.~~]

Section 3. (1) If a mortgage loan company, mortgage loan broker, lender, or the stockholder of any of these entities owns any portion of or controls an entity, or entities, that perform services, provide goods, or receive payment for goods or services provided in connection with a mortgage loan, each entity shall be treated as a separate entity, as if not owned or controlled, for purposes of disclosure to the borrower.

(2) The existence of any ownership or control and the extent and nature of the ownership or control shall be clearly and unambiguously disclosed to the borrower.

(3) The disclosure shall meet the requirements as set out in the federal Real Estate Settlement Procedures Act, C.F.R. Part 1024.1 through 1024.41[~~12 U.S.C.S. 2601 through 2617~~] ("RESPA"), and follow the prescribed disclosure format as set out in Appendix D of Part 1024[~~3500~~] RESPA.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation imposes disclosure requirements and limitations on fees, expenses and costs paid by a borrower to a mortgage loan company or mortgage loan broker pursuant to KRS 286.8-120(1) and (2).

(b) The necessity of this administrative regulation: This administrative regulation provides important consumer protection safeguards to ensure fairness and transparency in the mortgage lending process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the commissioner to exercise general supervision and control over mortgage loan companies and mortgage loan brokers doing business in the Commonwealth of Kentucky by amending or rescinding rules and regulations necessary and appropriate to accomplish the basic purposes of and the provisions contained within KRS 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides important consumer protection safeguards to ensure fairness and transparency with regard to the fees, expenses and costs authorized to be charged to borrowers by KRS 286.8-120(1) and (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: This amendment clarifies the regulation by providing required updates to terminology and statutory citations, and eliminates a mark-up of loan repayment program fees charged to borrowers.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to modernize and update the regulation's accuracy in light of terminology and citation changes made since it was originally enacted.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with, and

continues to conform to, the authorization provided for the original regulation by KRS 286.8-140(1).

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the regulation to ensure conformity with revised terminology and statutory citations

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While the amended language of the regulation will be applicable to all 1,465 mortgage loan licensees, it will have no material change on any of their regulatory obligations.

(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 change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will retain all the compliance benefits offered by the original regulation.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No funding will be required for the implementation and enforcement of 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 increased any fees: This amendment does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.8-140(1).

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

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(Amendment)

808 KAR 12:055. Uniform standards for mortgage loan processor applicant employee background checks.

RELATES TO: KRS 286.8-010, 286.8-255(9), 15 U.S.C. 1681, et seq.

STATUTORY AUTHORITY: KRS 286.8-140(1), 286.8-255(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. Prior to hiring a mortgage loan processor applicant, KRS 286.8-255(9) requires licensees to perform an employee background check in accordance with uniform standards established by the commissioner demonstrating that the mortgage loan processor applicant has not been convicted of, pled guilty to, or pled nolo contendere to certain felonies and that the mortgage loan processor applicant has demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan processor applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of KRS Chapter 286.8. This administrative regulation establishes the uniform standards for these employee background checks.

Section 1. Definitions.

(1) "Adverse action" means a denial of employment based in whole or in part on information obtained from an employee background check conducted pursuant to KRS 286.8-255(9) and this administrative regulation.

(2) "Consumer report" is[~~means a consumer report as~~] defined by section 603(d) of the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

(3) "Control person" means the following:

(a) A director, general partner, managing member, or executive officer;

(b) Any person who:

1. Directly or indirectly has the right to vote ten (10) percent or more of a class of a voting security; or

2. Has the power to sell or direct the sale of ten (10) percent or more of a class of voting securities;

(c) In the case of a partnership or limited liability company, any person that has the right to receive upon dissolution ten (10) percent or more of the capital; or

(d) Any person that exercises control.

(4)[~~(3)~~] "Governmental agency" means any executive, legislative, or judicial agency, department, authority, political subdivision, or instrumentality of a state, the United States, or a foreign government.

(5)[~~(4)~~] "Licensee" is defined by KRS 286.8-010(15).

(6)[~~(5)~~] "Mortgage loan processor" is defined by KRS 286.8-010(22).

(7)[~~(6)~~] "Mortgage loan processor applicant" means a person making an application with a licensee to be employed by the licensee as a mortgage loan processor.

(8)[~~(7)~~] "Nationwide consumer reporting agency" means a consumer reporting agency that compiles and maintains files on

consumers on a nationwide basis as defined by section 603(p) of the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

Section 2. Uniform Standards for Mortgage Loan Processor Employee Background Checks.

(1) Each background check conducted by a licensee pursuant to KRS 286.8-255(9) shall:

(a) Be in writing;

(b) Be conducted no earlier than six (6) months prior to hiring a mortgage loan processor applicant; and

(c) At a minimum include the following:

1. A consumer report compiled by a nationwide consumer reporting agency that includes information reflecting the mortgage loan processor applicant's credit history;

2. A report detailing the search for any publicly available criminal records of the mortgage loan processor applicant involving felonies in Kentucky and in all other states or foreign jurisdictions where the mortgage loan processor applicant has resided or worked and any records found or obtained; and

3. A report detailing the search for any publicly available criminal records of the mortgage loan processor applicant involving misdemeanors of which an essential element is fraud, breach of trust, or dishonesty in Kentucky and in all other states or foreign jurisdictions where the mortgage loan processor applicant has resided or worked for the five (5) years preceding the date of application and any records found or obtained.

(2) In obtaining the information required by subsection (1) of this section, a licensee may reasonably rely upon written reports, statements, or records obtained from any of the following:

(a) A governmental agency;

(b) A nationwide consumer reporting agency; or

(c) A search firm that:

1. Conducts background investigations in accordance with all applicable law; and

2. Produces a written investigative report that contains the date the report was prepared, the scope of the search, the results of the search, and a statement indicating that the report is accurate and complete to the best of the firm's knowledge and belief.

(3) When conducting the employee background check and making the determinations required by KRS 286.8-255(9) and this administrative regulation, each licensee shall comply with the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., and all other applicable state or federal laws.

Section 3. Factors Used to Make the Determinations Required by KRS 286.8-255(9).

(1) A licensee shall determine whether a mortgage loan processor applicant has demonstrated financial responsibility pursuant to KRS 286.8-255(9)(b) after review of:

(a) All information obtained from the mortgage loan processor applicant; and

(b) The mortgage loan processor applicant's consumer report for the following information:

1. Any outstanding judgments, excluding judgments arising solely from medical expenses for the mortgage loan processor applicant or an immediate family member;

2. Any outstanding tax liens or other governmental liens;

3. Any foreclosures occurring within five (5) years of the date of the consumer report;

4. Any bankruptcies occurring within five (5) years of the date of the consumer report; and

5. Any delinquent accounts occurring within five (5) years of the date of the consumer report.

(2) A licensee shall determine whether a mortgage loan processor applicant has demonstrated character and general fitness pursuant to KRS 286.8-255(9)(b) after review of all information obtained from the mortgage loan processor applicant and the employee background check conducted in accordance with this administrative regulation, including information shown on the mortgage loan processor applicant's consumer report.

(3) Prior to conducting the reviews required by subsections (1) and (2) of this section, and in accordance with subsection (4) of this section, the licensee, at a minimum, shall obtain the following information and disclosures from the mortgage loan processor applicant:

(a) A complete residential and employment history for the ten (10) years preceding the date of application;

(b) Whether a bonding company has ever denied, paid, or revoked a bond for the following:

1. The mortgage loan processor applicant; or

2. An entity in which the mortgage loan processor applicant acted as a control person if the denial, payment, or revocation was based on acts that occurred while the mortgage loan processor applicant exercised control;

(c) Whether the mortgage loan processor applicant has ever been convicted of, pled guilty to, or pled nolo contendere to the following in any domestic, foreign, or military court:

1. Any felony during the seven (7) year period preceding the date of application made with the licensee;

2. Any felony, regardless of the date of conviction or pleading, if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering; or

3. Any misdemeanor for which an essential element is fraud, breach of trust, or dishonesty during the five (5) year period preceding the date of application made with the licensee;

(d) Whether there are any pending charges against the mortgage loan processor applicant involving a crime referenced in paragraph (c) of this subsection;

(e) Whether any domestic or foreign court ever found, or there is pending in any court an action alleging, that the mortgage loan processor applicant violated or was involved in a violation of a financial services-related statute or regulation;

(f) Whether any governmental agency or self-regulatory organization ever entered an order or made a finding determining, or there is pending an action initiated by any agency or organization alleging, that the following person or entity made a false statement, engaged in dishonest, unfair, or deceptive conduct or practices, engaged in fraudulent conduct, or violated or was involved in the violation of a financial services-related statute or regulation:

1. The mortgage loan processor applicant; or

2. An entity in which the mortgage loan processor applicant acted as a control person if the order, finding, or action was based on acts that occurred while the mortgage loan processor applicant exercised control;

(g) Whether the following person or entity has had a license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of any state or the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by any state or the United States under threat of administrative action:

1. The mortgage loan processor applicant; or

2. An entity in which the mortgage loan processor applicant acted as a control person if the denial, suspension, revocation, or termination was based on acts that occurred while the mortgage loan processor applicant exercised control;

(h) Whether the mortgage loan processor applicant has ever been named as a respondent or defendant in a financial services-related consumer-initiated arbitration or civil action that resulted in an arbitration award, civil judgment, or settlement involving the payment of money or taking of corrective action by the mortgage loan processor applicant;

(i) Whether the mortgage loan processor applicant has ever been found to have violated or is the subject of a pending investigation involving the violation of any rule of conduct for test takers of the S.A.F.E. Mortgage Loan Originator Test administered by the Nationwide Mortgage Licensing System and Registry; and

(j) Complete details of all events and proceedings disclosed by the mortgage loan processor applicant.

(4) Any conviction, plea, denial, suspension, revocation, surrender, termination, order, or finding that has been formally vacated or set aside shall not be deemed a conviction, plea, denial, suspension, revocation, surrender, termination, order, or finding for the purposes of subsection (3) of this section.

Section 4. Mortgage Loan Processor Applicant's Right to

Review and Submit. If information is discovered or obtained by a licensee concerning a mortgage loan processor applicant that may result or contribute to an adverse action by the licensee concerning the mortgage loan processor applicant, the mortgage loan processor applicant shall be given a minimum of ten (10) days to do the following prior to the making of a final employment decision by the licensee:

(1) Review the information and any documents relating to the information;

(2) Dispute the accuracy of the information; and

(3) Submit additional, corrected, or mitigating explanation, information, or documents for the licensee's review.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: Prior to hiring a mortgage loan processor, KRS 286.8-255(9) requires licensees to perform an employee background check in accordance with uniform standards established by the commissioner demonstrating that the applicant has not been convicted of, pled guilty to, or pled nolo contendere to certain felonies and that the mortgage loan processor applicant has demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan processor applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of KRS Chapter 286.8. This administrative regulation establishes the uniform standards for employee background checks required of licensees by KRS 286.8-255(9) and factors to be considered in making the related statutorily-required fitness determinations.

(b) The necessity of this administrative regulation: This administrative regulation provides the uniform standards established by the commissioner, as required by KRS 286.8-255(9), to be used in the assessment of whether a mortgage loan processor applicant will operate honestly, fairly, lawfully and efficiently pursuant to statutory purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the commissioner to exercise general supervision and control over mortgage loan companies and mortgage loan brokers doing business in the Commonwealth of Kentucky by amending or rescinding rules and regulations necessary and appropriate to accomplish the basic purposes of and the provisions contained within KRS 286.8. In addition, through this administrative regulation, the commissioner sets forth the uniform standards referenced in KRS286.8-255(9).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the uniform standards for employee background checks required of licensees by KRS 286.8-255(9).

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a definition to a term used in the regulation.

(b) The necessity of the amendment to this administrative regulation: The definition added through the amendment promotes compliance by clarifying the regulatory requirements for licensees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.8-140(1) and 286.8-255(9).

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides additional guidance and clarification of the statutorily mandated standards set forth in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While the amended updating language of the regulation will be applicable to all 1,465 licensees, it will have no material change on any of their regulatory obligations.

(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 change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will retain all the compliance benefits offered by the original regulation.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No funding will be required for the implementation and enforcement of 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 increased any fees: This amendment does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.8-140(1) and KRS 286.8-255(9).

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

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Office of Health Data and Analytics
Division of Health Information
(Amendment)

900 KAR 9:010. Kentucky Health Information Exchange participation.

RELATES TO: KRS 194A.030(1)(d), 311.621(10), 42 C.F.R. Part 495, 45 C.F.R. 160.103, Part 164[~~(e)~~]

STATUTORY AUTHORITY: KRS 194A.050(1), EO 2018-325

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030(1)(d)[~~(e)~~] requires the Governor's Office of Electronic Health Information (GOEHI)[~~Kentucky Office of Health Benefit and Health Information Exchange, Division of Kentucky Electronic Health Information~~] within the Cabinet for Health and Family Services to improve patient care, reduce medical errors, and make more efficient use of health care dollars by reducing redundant services. EO 2018-325 abolished GOEHI and transferred its functions to the Office of Health Data and Analytics (OHDA) within the Cabinet for Health and Family Services. To support the health care delivery system using electronic information technology as directed by KRS 194A.030(1)(d) and EO 2018-325, the Office of Health Data and Analytics, Division of Health Information (DHI)[~~(e), GOEHI~~] has implemented the[~~a~~] Kentucky Health Information Exchange (KHIE). This administrative regulation establishes the procedures for participation by health care providers in the KHIE.

Section 1. Definitions.

(1) "CCD" means the Continuity of Care Document, which is:

(a) Defined by the Health Information Technology Standards Panel (HITSP)[~~of the American National Standards Institute (ANSI)~~]; and

(b) Found in the HL7 Implementation Guide: CDA Release 2 - Continuity of Care Document (CCD)[~~"HITSP Summary Documents Using HL7 Continuity of Care (CCD) Component", version 2.5, July 8, 2009~~].

(2) "Edge services" means hardware and software technology used in the storage and transmission of participant data.

(3) "Health care provider" is defined by KRS 311.621(10).

(4) [~~"HIPAA" is defined by KRS 216.263(4).~~

~~(5)~~] "HL7 transaction" means the specifications for electronic data exchange by health care environments as defined by HITSP[~~ANSI that may be found at http://www.hl7.org/implement/standards/ansiapproved.cfm?ref=nav~~].

(5)[~~(6)~~] "Interface" means the point of interaction or communication between the participant's health information system and the KHIE.

Section 2. Participation in the KHIE. In order to participate in the KHIE, the health care provider shall:

(1) Have entered into an agreement, using[~~either~~]:

(a) DHI[~~The KEHI~~] – Form 1A, Kentucky Office of Health Data and Analytics[~~Benefit and Health Information Exchange~~], Division of[~~Kentucky Electronic~~] Health Information, Hospital Participation Agreement;[~~or~~]

(b) DHI[~~The KEHI~~] – Form 1B, Kentucky Office of Health Data and Analytics[~~Benefit and Health Information Exchange~~], Division of[~~Kentucky Electronic~~] Health Information, Other Provider Participation Agreement[~~Other Providers~~]; or

(c) DHI – Form 1C, Kentucky Office of Health Data and Analytics, Division of Health Information, Pharmacy Participation Agreement;

(2) Continue to operate under the agreement entered into under subsection (1) of this section without the agreement being terminated; and

(3) Be:

(a) A covered entity as defined by 45 C.F.R. 160.103[~~HIPAA~~];

(b) The Kentucky Department for Medicaid Services; or

(c) The Kentucky State Laboratory, Division of Laboratory Services, Department of Public Health.

Section 3. Kentucky Health Information Exchange services. KHIE shall provide information sharing and software for the following:

(1) A CCD interface using web services to support data exchange with participants;

(2) Support for a standard series of HL7 transactions sent from the health care provider's health information system via secure edge services for storage and retrieval; and

(3) Collaboration with participants to support development of the interfaces required for participants to connect to KHIE.

Section 4. Participant responsibilities. Participants shall be responsible for building interfaces to connect to the KHIE.

Section 5. Data exchanged by the Kentucky Health Information Exchange. KHIE may exchange data and make data available consisting of patient admission, discharge and transfer systems, laboratory systems, diagnostic imaging systems, medication histories, allergies, and technologically available patient information required to support data exchange.

Section 6. Access to data by participants. Participants may access data through the KHIE as well as provide data through the KHIE for access by other participants.

Section 7. Access to other health information exchanges. DHI[~~KEHI~~] may establish arrangements with other health information exchanges to allow participants access to data permitted by DHI[~~the GOEHI~~] – Form 1A, DHI[~~or KEHI~~] – Form 1B, or DHI – Form 1C.

Section 8. Recipient of Kentucky Health Information Exchange Services. A health care provider that is participating in the KHIE shall qualify to become a recipient of KHIE services upon:

(1) Validation of any KHIE Go-Live transaction by the participant and DHI[~~the KEHI~~]; and

(2) The sending of electronic notification of Go-Live Approval by DHI to the participant[~~Completion of:~~

~~(a) The KEHI – Form 2A, Kentucky Health Information Exchange Go-Live Approval for Edge Services; or~~

~~(b) The KEHI – Form 2B, Kentucky Health Information Exchange Go-Live Approval for Web Services~~].

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) DHI[~~KEHI~~] – Form 1A, "Kentucky Office of Health Data and Analytics, Division of[~~Governor's Office of Electronic~~] Health Information,[~~Exchange~~] Hospital Participation Agreement", January, 2019[~~September 2012~~];

(b) DHI[~~KEHI~~] – Form 1B, "Kentucky Office of Health Data and Analytics, Division of[~~Governor's Office of Electronic~~] Health Information, Other Provider[~~Exchange~~] Participation Agreement [~~Other Providers~~]", January, 2019[~~September, 2012~~];

(c) DHI – Form 1C, "Kentucky Office of Health Data and Analytics, Division of Health Information, Pharmacy Participation Agreement", January, 2019; and

(d) "HL7 Implementation Guide: CDA Release 2 - Continuity of Care Document (CCD)", April 01, 2007[~~KEHI – Form 2A, "Kentucky Health Information Exchange Go-Live Approval for Edge Services," September, 2012;~~

~~(d) KEHI – Form 2B, "Kentucky Health Information Exchange Go-Live Approval for Web Services", September, 2012; and~~

~~(e) KEHI - Form 3, "HITSP Summary Documents Using HL7 Continuity of Care (CCD) Component", Version 2.5, July 8, 2009~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Health Data and Analytics[~~Governor's Office of Electronic Health Information~~], 8 Mill Creek Park[~~275 East Main Street 4WA~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT E. PUTT, Executive Director
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Kathleen Hines, (502) 564-7905, Kathleen.Hines@ky.gov, and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation confirms that the Cabinet for Health and Family Services, Office of Health and Data Analytics, Division of Health Information, shall be responsible for the administration of the KHIE, and establishes the requirements for participation in KHIE by health care providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the operation of and participation in KHIE.

(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 providing for the orderly administration of a health information exchange system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by providing for the orderly administration of a health information exchange 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 to this administrative regulation incorporates new office and division names established by EO 2018-325 for overseeing KHIE, as well as updates materials incorporated by reference and KHIE capabilities.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update office and division names, and to update materials incorporated by reference and KHIE capabilities.

(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 of KHIE capabilities and services offered.

(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 through its update of incorporated materials and KHIE capabilities in accordance with state requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will update terms of the participation agreements incorporated by reference, which adds to the services KHIE offers its participants. The amendment also adds a Pharmacy Participation Agreement. There are approximately 998 KHIE participants.

(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: KHIE participants will not have any new burden 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): KHIE participants will not incur any new cost as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KHIE provides participant interconnection to laboratories, registries, and other data sources. KHIE provides comprehensive stakeholder connectivity, and comprehensive integration of public health records including the Kentucky Immunization Registry, Kentucky Cancer Registry, Kentucky Reportable Diseases Surveillance Registry, KHIE Advance Directive Registry, and BioSense syndromic surveillance reporting. KHIE also contains comprehensive integration of Medicaid data. The updated Participation Agreements will allow KHIE to perform data aggregation and analytic services on behalf of participants.

(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 is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no fiscal impact 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 to be used for the implementation and enforcement of this administrative regulation will be from the Centers for Medicare and Medicaid Services, and Division of Health Information's funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: An increase in fees or funding 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 applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 495

2. State compliance standards. KRS 194A.030, 194A.050

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 495, 45 C.F.R. Parts 95, 164

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Information.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030, 194A.050, 42 C.F.R. Part 495, 45 C.F.R. Part 164.

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 1:270. Podiatry Program services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 440.60, 42 U.S.C. 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the coverage provisions relating to podiatry services for which payment shall be made by the Medicaid Program on behalf of both categorically needy and medically needy beneficiaries.

Section 1. Coverage. The Medicaid program shall cover a medical or surgical service provided to an eligible Medicaid recipient by a licensed, participating podiatrist if the service falls within the scope of the practice of podiatry except as provided in Section 2 of this administrative regulation.

Section 2. Exclusions From Coverage and[~~,~~] Exceptions to Exclusions from Coverage. Except as provided in this section, the following areas of care shall not be covered by the Medicaid program:

(1) Routine foot care.

(a) Except as provided in paragraph (b) of this subsection and subsection (2) of this section, a service characterized as routine foot care shall not be covered. Routine foot care shall include:

1. The cutting or removal of a corn or callus;

2. The trimming of a nail; or

3. Other hygienic or preventive maintenance care in the realm of self-care including:

a. Cleaning or soaking a foot;

b. The use of a skin cream to maintain skin tone of an ambulatory or bedfast patient; or

c. A service performed in the absence of localized illness, injury or symptom involving the foot.

(b)1. Payment shall be made for routine foot care if:

a. The[~~If the~~] patient has a systematic disease of sufficient severity such as arteriosclerosis, chronic thrombophlebitis, diabetes, or a peripheral neuropathy; and

b.[~~that~~] Unskilled performance of a procedure included in subparagraph 2. of this paragraph[~~the following procedures~~] would be hazardous; and

c. The patient's condition results from:

(i) Severe circulatory embarrassment; or

(ii) An area of desensitization in a leg or foot.

2. For the purposes of this paragraph, routine foot care shall include[~~, payment shall be made for routine foot care, including~~] the cutting or removing of a:

a.[~~1.~~] Corn;

b.[~~2.~~] Callus; or

c.[~~3.~~] Nail.

(2) A service ordinarily considered routine shall be covered if the service is performed as a necessary and integral part of an otherwise covered service, including the diagnosis or treatment of:

(a) A diabetic ulcer;

(b) A wound; or

(c) An infection.

(3) A diagnostic or treatment service for a foot infection shall be covered.[~~Section 3. Incorporation by Reference. (1) "Podiatry~~

~~Program Manual", July 1997 edition, Department of Medicaid Services, is incorporated by reference.~~

~~(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 4, 2018

FILED WITH LRC: December 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov.; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to podiatry services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of podiatry services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the provision of medically necessary podiatry services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: The amendments remove the podiatry program manual, include various examples of conditions that may warrant payment for routine foot care, and make various technical amendments.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation are necessary to remove the podiatry program manual and to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by removing the podiatry program manual and complying with KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by removing the podiatry program manual and complying with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, podiatrists, and Medicaid recipients receiving podiatry services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Podiatrists will be able to provide reimbursable services to Medicaid recipients.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the implementation of this administrative regulation.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 440.60

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? DMS projects no revenue will initially be generated by the amendment to 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? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs as a result of the amendments to this administrative regulation.

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

subsequent years? The department anticipates no additional costs as a result of the amendments to 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440.60

2. State compliance standards. 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 for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 440.60 governs medical or other remedial care provided by licensed practitioners.

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 set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

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

907 KAR 1:280. Payments for Podiatry Program services.

RELATES TO: KRS 205.520, 205.560

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the method for determining payments for podiatry services.

Section 1.[~~Definitions. (1) "Department" means the Department for Medicaid Services or its designee.~~

~~(2) "Resource-based relative value scale (RBRVS) unit" means a value based on the service which takes into consideration the practitioner's work, practice expenses, liability insurance, and a geographic factor based on the price of staffing and other resources required to provide the service in an area relative to national average prices.~~

~~Section 2.~~] Payments for Podiatry Services. (1)(a) The department[~~cabinet~~] shall reimburse a licensed, participating podiatrist for a covered podiatry service[~~within the podiatrist's scope of licensure~~] as established in 907 KAR 1:270.

(b) A laboratory service performed by a podiatrist pursuant to this section shall be reimbursed as established in subsection (3) of this section[~~, except a laboratory service, provided to an eligible Medicaid recipient at the usual and customary actual billed charge up to the fixed upper limit per procedure established by the department using the Kentucky Medicaid fee schedule developed from a resource-based relative value scale (RBRVS) on parity with medical doctors as described in subsection (2) of this section. If an RBRVS based fee is not established, the department shall set a reasonable fixed upper limit for the procedure consistent with general Medicaid rate setting methodology~~].

(2) Procedures performed pursuant to this section shall be reimbursed on parity with medical doctors using the Kentucky Medicaid fee schedule and in accordance with 907 KAR 3:010[~~The RBRVS unit shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. The department shall use the Kentucky conversion factor for "All Other Services" as established in 907 KAR 3:010, Section 2(2)(b)~~].

(3) Reimbursement for a covered clinical laboratory service shall be based on the Medicare allowable payment rate.[~~For a laboratory service with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charge.~~]

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 4, 2018

FILED WITH LRC: December 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions relating to podiatry services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws that require provision of podiatry services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established in KRS 205.560(1) for the reimbursement of medically necessary podiatry services to Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: The amendments clarify the administrative regulation by

referencing the controlling reimbursement regulations and fee schedule and removing a reference to lab services payment that does not correspond to current department reimbursement methodology.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to clarify certain references and to correspond to current lab services reimbursement methodology.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying payment requirements and removing a lab services reimbursement policy that is no longer current.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by clarifying the administrative regulation to refer to the controlling reimbursement regulations and fee schedule and to remove a reference to a lab services payment that is no longer reflective of current policy.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, podiatrists, and Medicaid recipients receiving podiatry services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Podiatrists will be able to provide reimbursable services to Medicaid recipients.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the implementation of this administrative regulation.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The department projects no revenue will initially be generated by the amendment to 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? The department projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs as a result of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs as a result of the amendments to 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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440.60

2. State compliance standards. 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 for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 440.60 governs medical or other remedial care provided by licensed practitioners.

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 set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

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

907 KAR 1:360. Preventive and remedial public health services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 431.615, 42 U.S.C. 1320d to 1320d-8, 45 C.F.R. Parts 160, 164

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a, b, c, d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to preventive and remedial public health services provided through the Department for Public Health and the method of reimbursement for these services by the Kentucky Medicaid Program.

Section 1. Definitions.

(1) "Add-on code" means a designated CPT code which may be used in conjunction with another CPT code to denote that an

adjunctive service has been performed.

(2) "CPT code" means a code used for reporting procedures and services performed by physicians or other licensed medical professionals, including a provider type twenty (20), which is published annually by the American Medical Association in Current Procedural Terminology.

(3) "Department" means the Department for Medicaid Services or its designated agent.

(4) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a more complex primary procedure; and

(b)1. Requires few additional physician resources; or

2. Is clinically integral to the performance of the primary procedure.

(5) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(6)[~~"KenPAC" means the Kentucky Patient Access and Care System.~~

~~(7) "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System.~~

~~(8)~~] "Medically necessary" or "Medical necessity" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(7)[~~(9)~~] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one[~~(1)~~] another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in current procedural terminology as inappropriate coding of procedure combinations.

(8) "Provider type twenty (20)" means an enrolled preventive services provider who conducts covered services via the Department for Public Health to Medicaid recipients. A number shall be assigned by the department to these providers, and the first two (2) digits shall be twenty (20).

(9)[~~(10)~~] "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code which takes into consideration the physician's work, practice expense, and liability insurance.

(10)[~~(11)~~] "Screening" means the evaluation of a recipient by a physician or other approved public health provider to determine:

(a) The presence of a disease or medical condition; and

(b) The necessity of further evaluation, diagnostic tests or treatment.

Section 2. Participation Requirements.

(1) The Department for Public Health shall comply with the terms and conditions established in the following administrative regulations:

(a) 907 KAR 1:005, Nonduplication of payments;

(b) 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions; and

(c) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation.

(2) The Department for Public Health shall comply with the requirements regarding the confidentiality of personal medical records as mandated by 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.

Section 3. Covered Services. The following medically-necessary preventive, screening, diagnostic, rehabilitative, and remedial services provided by the Department for Public Health directly or indirectly through its subcontractors shall be covered:

(1) Preventive medicine counseling;

(2) Genetic testing for diagnostic purposes;

(3) Immunizations;

(4) A chronic disease service;

(5)[~~(2)~~] A communicable disease service;

(6)[~~(3)~~] An early and periodic screening, diagnosis, and treatment (EPSDT) service;

(7)[~~(4)~~] A family planning service;

(8)[~~(5)~~] A maternity service; or

(9)[~~(6)~~] A pediatric service.

Section 4. Service Limitations.

(1) A laboratory procedure shall be limited to a procedure for which the provider has been certified in accordance with 42 C.F.R. Part 493.

(2) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F shall be covered within the scope and limitations of these federal regulations.

(3) Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.[~~(4) Except for a service specified in 907 KAR 1:320, Section 10(3)(a) through (q), a referral from the KenPAC PCP shall be required for a recipient enrolled in the KenPAC Program.~~]

Section 5. Reimbursement Pursuant to the Preventive Health Fee Schedule.

(1) Payment for a preventive health service specified in Section 3(1) through (9)[~~(6)~~] of this administrative regulation shall be calculated by multiplying the current Medicare conversion factor for Kentucky by the nonfacility relative value unit weight for the procedure code.

(2) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(3) If a copayment is required in accordance with 907 KAR 1:604, reimbursement shall be reduced by the amount of the copayment.

(4) If performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(5) Except for an applicable add-on code, reimbursement for an anesthesia service shall be limited to one (1) CPT code and one (1) unit of anesthesia per operative session.

(6) Reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service;

(c) A postoperative service and follow-up care:

1. Within ninety (90) days following the date of major surgery; or

2. Within ten (10) days following the date of minor surgery; and

(d) A preoperative consultation performed within two (2) days of the date of the surgery.

(7) A dental service performed pursuant to this administrative regulation shall be reimbursed pursuant to the DMS Dental Fee Schedule established pursuant to 907 KAR 1:026.

Section 6. Audits.

(1) The Department for Public Health or subcontracting local health departments shall provide to the Department for Medicaid Services or a representative of an agency or office listed in subsection (2) of this section, upon request:

(a) Information maintained by the provider to document the service provided;

(b) Information regarding a payment claimed by the provider for furnishing a service; or

(c) Information documenting the cost of the service.

(2) Access to provider or subcontractor records relating to a service provided shall be required for:

(a) A representative of the United States Department of Health and Human Services;

(b) The United States Centers for Medicare and Medicaid Services;

(c) The United States Attorney General's Office;

(d) The state Attorney General's Office;

(e) The state Auditor's office;

(f) The Office of the Inspector General; or

(g) An agent or representative as may be designated by the Secretary of the Cabinet for Health Services.

Section 7. Appeal Rights.

(1) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(2) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(3) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 4, 2018

FILED WITH LRC: December 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage and reimbursement provisions and requirements regarding Medicaid Program preventive health services provided by local health departments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage and reimbursement provisions and requirements regarding Medicaid Program preventive health services provided in local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage and reimbursement provisions and requirements regarding Medicaid Program preventive health services provided by local health departments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the coverage and reimbursement provisions and requirements regarding Medicaid Program preventive health services provided by local health departments.

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

(a) How the amendment will change this existing administrative regulation: The amendments change this administrative regulation by including provider type 20 as a provider of preventive services, to include preventive medicine counseling, genetic testing for diagnostic purposes and immunizations to covered preventive services, allow for certain approved providers to conduct screenings, clarify that dental services shall be reimbursed pursuant to the DMS Dental Fee schedule, and to remove a reference to a nonoperational program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate the provider type 20, include preventive medicine counseling, genetic testing for diagnostic purposes, and immunizations as covered services, allow certain additional approved providers to conduct screenings, clarify how dental services are to be reimbursed, and to remove a reference to a nonoperational program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by including a provider type of preventive services, including certain new covered services, and to remove references to a nonoperational program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by fully incorporating the provider type 20, including preventive medicine counseling, genetic testing for diagnostic purposes, and immunizations as covered services, allowing for additional approved providers to conduct screenings, and to clarify how dental services are to be reimbursed, and to remove references to a nonoperational program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medical Services, the Department for Public Health, and more than 55 local health departments will be affected by the amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No additional action is necessary to comply.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Entities will be able to fully participate in the Medicaid program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this amendment.

(b) On a continuing basis: The department anticipates no additional costs in the administration of this amendment.

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

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B)

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) and the Department for Public Health (including local health departments) will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a, b, c, d

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

(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? DMS projects no revenue will initially be generated by the amendment to 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? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs as a result of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs as a result of the amendments to this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Amendment)

907 KAR 010:820. Disproportionate share hospital distributions.

RELATES TO: KRS 205.565, 205.637, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(f), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.639, 205.640, 205.6401, 205.6403, 216.380(12), 42 C.F.R. Parts 412, 413, 447.252, 447.253, 447, Subpart E, 42 U.S.C. 1395ww(d)(5)(F), 1396a, 1396r-4

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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes disproportionate share hospital fund distribution provisions in accordance with KRS 205.639,[~~and~~] 205.640, 205.6401, and 205.6403.

Section 1. Definitions.

(1) "Base year" means the year of historical Medicaid DSH survey data used to determine initial DSH payments[~~"Acute care hospital" is defined by KRS 205.639(1)~~].

(2)[~~"Countable resource" means cash or an asset readily convertible to cash including a checking account, savings account, stock, bond, mutual fund, certificate of deposit, money market account, or similar financial instrument.~~

~~(3) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.~~

~~(4)~~] "Department" is defined by KRS 205.639(4)[~~means the Department for Medicaid Services or its designated agent~~].

(3)[~~(5)~~] "Disproportionate share hospital" or "DSH" means an in-state hospital that:

(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and

(b) Meets the criteria established in 42 U.S.C. 1396r-4(d).

(4) "Final disproportionate share hospital payment" or "final DSH payment" is defined by KRS 205.639(6).

(5) "Hospital-specific disproportionate share hospital limit" or "hospital-specific DSH limit" is defined by KRS 205.639(7).

(6) "Initial disproportionate share hospital payment" or "initial DSH payment" is defined by KRS 205.639(8).

(7) "Medicaid disproportionate share hospital survey" or "Medicaid DSH survey" is defined by KRS 205.639(12).

(8) "Medicaid inpatient utilization rate" or "MIUR" is defined by KRS 205.639(14).

(9) "Total uncompensated care costs" is defined by KRS 205.639(19).[~~(6) "DRG" or "diagnosis related group" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.~~

~~(7) "DRG-reimbursed hospital" means an in-state hospital reimbursed via a DRG methodology pursuant to 907 KAR 010:825.~~

~~(8) "Federal Register" means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.~~

~~(9) "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis:~~

~~(a) To an individual who is:~~

~~1. Determined to be indigent in accordance with KRS 205.640; and~~

~~2. Not a Medicaid recipient; and~~

~~(b) For which an individual shall not be billed by the hospital.~~

~~(10) "Indigent care eligibility criteria" means the criteria as specified in Section 9 of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.~~

~~(11) "Inpatient equivalency" means the equivalency that is:~~

~~(a) Determined by taking a hospital's aggregate Medicaid DRG reimbursement, dividing it by the aggregate Medicaid DRG allowed days, and determining a per diem amount paid; and~~

~~(b) Based on the Medicaid schedule contained in the most recently finalized Medicare cost report.~~

~~(12) "Long-term acute care hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).~~

~~(13) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.~~

~~(14) "Private psychiatric hospital" is defined by KRS 205.639(2).~~

~~(15) "Pro rata basis" means a basis for allocating an amount proportionately to all hospitals within a hospital category.~~

~~(16) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 020:240.~~

~~(17) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.~~

~~(18) "State mental hospital" is defined by KRS 205.639(3).~~

~~(19) "Third-party payor" means a payor of a third party pursuant to KRS 205.510(16).~~

~~(20) "University hospital" is defined by KRS 205.639(4).~~]

Section 2. Disproportionate Share Hospital Distribution General Provisions.

(1) Beginning with the state fiscal year 2019 DSH payment, each DSH payment shall be made in accordance with KRS 205.639, 205.640, 205.6401, and 205.6403.

(2) During the determination of an initial DSH payment, the department may adjust a hospital's total uncompensated care costs reported on the hospital's base year Medicaid DSH survey if the amount reported appears likely to result in a substantial redistribution of DSH funds that could have been avoided by adjusting the hospital's total uncompensated care costs.

(3) If an overpayment has been identified and repayment was not made by the hospital on or before January 31, pursuant to KRS 205.640, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 3. Disproportionate Share Hospital Medicaid DSH Survey Submission Provisions.

(1) Each Medicaid DSH survey submitted for the purpose of determining initial DSH payment amounts shall be submitted in accordance with the timeline established in KRS 205.640.

(2) Each Medicaid DSH survey and supporting documentation submitted pursuant to subsection (1) of this section shall be updated prior to the start of the final DSH examination to incorporate more complete data.

(a) The updated Medicaid DSH survey and the accompanying supporting documentation shall be submitted no later than October 31 of the calendar year ending two (2) calendar years after the end of the state fiscal year to which the DSH payment pertains.

(b) The updated Medicaid DSH survey and the accompanying supporting documentation shall be submitted even if no changes were made since the original submission.

(c) A submission of a Medicaid DSH survey by a hospital shall serve as certification that all Medicaid and uninsured DSH data is:

1. Complete;

2. Accurate; and

3. In agreement with the hospital's internal records.

(d) Failure to submit a final DSH survey in accordance with paragraph (a) of this subsection or other required information for receipt of a final DSH payment shall result in:

1. A recoupment of the initial DSH payment; and

2. No calculation of a final payment by the department.

(3) If a provider does not have twelve (12) months of cost report data needed to determine an initial DSH payment, the cost report used in determining the provider's initial DSH payment shall be prioritized as follows:

(a) The most recent cost report, based on the fiscal year end, in the base year with greater than or equal to six (6) months of data;

(b) The most recent cost report, based on the fiscal year end, from the year prior to the base year with greater than or equal to six (6) months of data; or

(c) If a cost report is not available with at least six (6) months of data, the new provider proxy method shall be utilized pursuant to KRS 205.640(3)(e)1.d.

Section 4. Disproportionate Share Hospital Medicaid DSH Payment Appeals Provisions.

(1) An initial DSH payment shall not be subject to appeal in accordance with KRS 205.640.

(2) A final DSH payment shall be subject to appeal in accordance with 907 KAR 1:671.

Section 5. Disproportionate Share Hospital Medicaid DSH Survey Payment Redistribution Provisions. For state fiscal year 2011 to state fiscal year 2018, a DSH payment shall be redistributed in accordance with this section.

(1) A DSH payment found in the DSH audit process for a given state fiscal year that exceeds the DSH limit for a hospital shall be recouped from that hospital in order to reduce the DSH payment to the limit established pursuant to this administrative regulation.

(a) The excess amount identified shall be due to the department within sixty (60) days after notification.

(b) If a hospital does not submit the excess amount established pursuant to this subsection within sixty (60) days, the department shall withhold future payments to the hospital until the department has collected in full the amount owed by the hospital to the department.

(2) A payment that is recouped from a hospital as a result of the DSH audit shall be redistributed to hospitals that have been determined by the department to have been paid less than their hospital-specific DSH limit pursuant to this administrative regulation.

(3) Each redistribution shall:

(a) Occur proportionately to the original distribution of DSH funds; and

(b) Not exceed each hospital's specific DSH limit.

(4) If, because of the hospital-specific DSH limits, DSH funds cannot be fully redistributed within the original distribution pool established pursuant to subsection (3) of this section, the excess funds shall be redistributed to the other distribution pools in proportion to the original DSH payments made by the department.

(5) If the Medicaid program's original DSH payments do not fully expend the federal DSH allotment for any state fiscal year, the remaining DSH allotment shall be:

(a) Retroactively paid to each hospital that is determined to have received less than its hospital-specific DSH limit after consideration of any potential redistributions pursuant to subsection (1) of this section;

(b) Proportional to the original DSH payment made to each hospital; and

(c) Limited to each hospital's specific DSH limit.

Section 6. Federal Approval and Federal Financial Participation. The department's coverage of DSH payments or other services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation;

(2) Availability of state funds; and

(3) Centers for Medicare and Medicaid Services' approval.[~~A DSH distribution shall:~~

~~(1) Be made to a qualified hospital;~~

~~(2) Be based upon available funds in accordance with KRS 205.640;~~

~~(3) Be based upon a hospital's proportion of inpatient and outpatient indigent care from the preceding state fiscal year;~~

~~(4) Be a prospective amount. For example, a DSH distribution made to a hospital in October 2007 shall cover the state fiscal year beginning July 1, 2007 and ending June 30, 2008;~~

~~(5) Not be subject to settlement or revision based on a change in utilization during the year to which it applies; and~~

~~(6) Be made on an annual basis.~~

~~Section 3. Disproportionate Share Hospital Distribution to a DRG-Reimbursed Acute Care Hospital. The department shall determine a DSH distribution to a DRG-reimbursed acute care hospital by:~~

~~(1) Determining a hospital's average reimbursement per discharge;~~

~~(2) Dividing the hospital's average reimbursement per~~

~~discharge by Medicaid days per discharge;~~

~~(3) Multiplying the amount established in subsection (2) of this section by the hospital's total number of inpatient indigent care days for the most recently completed state fiscal year to establish the hospital's inpatient indigent care cost;~~

~~(4) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091;~~

~~(5) Combining the inpatient indigent care cost established in subsection (3) of this section with the outpatient indigent care cost established in subsection (4) of this section to establish a hospital's indigent care cost total; and~~

~~(6) Comparing the total indigent care cost for each DRG-reimbursed hospital to the indigent care costs of all hospitals receiving DSH distributions under the acute care pool pursuant to KRS 205.640(3)(d) to establish a DSH distribution on a pro rata basis.~~

~~Section 4. Disproportionate Share Hospital Distribution to a Critical Access Hospital, Rehabilitation Hospital or Long Term Acute Care Hospital. The department shall determine a DSH distribution to a critical access hospital, rehabilitation hospital, or long term acute care hospital:~~

~~(1) For the period beginning with the state fiscal year beginning July 1, 2007 and ending June 30, 2008 by:~~

~~(a) Multiplying the hospital's per diem rate in effect as of June 30, 2007 by its total number of inpatient indigent care days for the preceding state fiscal year (July 1, 2006 - June 30, 2007) to establish the hospital's inpatient indigent care cost;~~

~~(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091;~~

~~(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and~~

~~(d) Comparing the indigent care cost totals for each critical access hospital, rehabilitation hospital and long term acute care hospital to the indigent care costs of all hospitals receiving DSH distributions from the acute care pool pursuant to KRS 205.640(3)(d) to establish a hospital's DSH distribution on a pro rata basis; and~~

~~(2) For the state fiscal year period beginning July 1, 2008 and subsequent state fiscal years, by:~~

~~(a) Multiplying the hospital's per diem rate in effect as of August 1 of the state fiscal year period included in the state fiscal year period referenced in subsection (2) of this Section by its total number of inpatient indigent care days for the preceding state fiscal year to establish the hospital's inpatient indigent care cost;~~

~~(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091;~~

~~(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and~~

~~(d) Comparing the indigent care cost totals for each critical access hospital, rehabilitation hospital and long term acute care hospital to the indigent care costs of all hospitals receiving DSH distributions from the acute care pool pursuant to KRS 205.640(3)(d) to establish a hospital's DSH distribution on a pro rata basis.~~

~~Section 5. Disproportionate Share Hospital Distribution to a Private Psychiatric Hospital. The department shall determine a DSH distribution to a private psychiatric hospital:~~

~~(1) For the period beginning with the state fiscal year beginning July 1, 2007 and ending June 30, 2008 by:~~

~~(a) Multiplying the hospital's per diem rate in effect as of June 30, 2007 by its total number of inpatient indigent care days for the preceding state fiscal year (July 1, 2006 - June 30, 2007) to establish the hospital's inpatient indigent care cost;~~

~~(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091 or by establishing an inpatient equivalency;~~

~~(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and~~

~~(d) Comparing the indigent care cost totals of each private psychiatric hospital to establish, using the DSH funding allocated to private psychiatric hospitals, a private psychiatric hospital's DSH distribution on a pro rata basis; and~~

~~(2) For the state fiscal year period beginning July 1, 2008 and subsequent state fiscal years, by:~~

~~(a) Multiplying the hospital's per diem rate in effect as of August 1 of the state fiscal year period included in the state fiscal year period referenced in subsection (2) of this Section by its total number of inpatient indigent care days for the preceding state fiscal year to establish the hospital's inpatient indigent care cost; and~~

~~(b) Determining an in-state hospital's outpatient indigent care cost by multiplying each in-state hospital's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 025:091 or by establishing an inpatient equivalency;~~

~~(c) Combining the inpatient indigent care cost established in paragraph (a) of this subsection with the outpatient indigent care cost established in paragraph (b) of this subsection to establish a hospital's indigent care cost total; and~~

~~(d) Comparing the indigent care cost totals of each private psychiatric hospital to establish, using the DSH funding allocated to private psychiatric hospitals, a private psychiatric hospital's DSH distribution on a pro rata basis.~~

~~Section 6. Disproportionate Share Hospital Distribution to a State Mental Hospital. The Department shall determine a DSH distribution to a state mental hospital by:~~

~~(1) Comparing each state mental hospital's costs of services provided to individuals meeting the indigent eligibility criteria established in Section 9 of this administration regulation, minus any payment made by or on behalf of the individual to the hospital; and~~

~~(2) Using the DSH funding allocated to state mental hospitals to establish a state mental hospital's DSH distribution on a pro rata basis.~~

~~Section 7. Disproportionate Share Hospital Distribution to a University Hospital. The department's DSH distribution to a university hospital shall:~~

~~(1) Be based on the hospital's historical proportion of the costs of services to Medicaid recipients, minus reimbursement paid via 907 KAR 010:825 or 907 KAR 010:815, plus the costs of services to indigent and uninsured patients minus any distributions made on behalf of indigent and uninsured patients;~~

~~(2) Be contingent upon a facility providing up to 100 percent of matching funds to receive federal financial participation for distribution under this subsection; and~~

~~(3) Comply with KRS 205.640(3)(a)2.~~

~~Section 8. Indigent Care Eligibility. (1) Prior to billing a patient and prior to submitting the cost of a hospital service to the department as uncompensated, a hospital shall use the indigent care eligibility form, DSH-001, Application for Disproportionate Share Hospital (DSH) Program, and the Disproportionate Share Hospital (DSH) Program Manual, to assess a patient's financial situation to determine if:~~

~~(a) Medicaid or Kentucky Children's Health Insurance Program (KCHIP) may cover hospital expenses; or~~

~~(b) A patient meets the indigent care eligibility criteria.~~

~~(2) An individual referred to Medicaid or KCHIP by a hospital shall apply for the referred assistance, Medicaid or KCHIP, within~~

~~thirty (30) days of completing the DSH-001, Application for Disproportionate Share Hospital Program (DSH), at the hospital.~~

~~Section 9. Indigent Care Eligibility Criteria. (1) A hospital shall receive disproportionate share hospital funding for an inpatient or outpatient medical service provided to an indigent patient under the provisions of this administrative regulation if the following apply:~~

~~(a) The patient is a resident of Kentucky;~~

~~(b) The patient is not eligible for Medicaid or KCHIP;~~

~~(c) The patient is not covered by a third-party payor;~~

~~(d) The patient is not in the custody of a unit of government that is responsible for coverage of the acute care needs of the individual;~~

~~(e) The hospital shall consider all income and countable resources of the patient's family unit and the family unit shall include:~~

~~1. The patient;~~

~~2. The patient's spouse;~~

~~3. The minor's parent or parents living in the home; and~~

~~4. Any minor living in the home;~~

~~(f) A household member who does not fall in one (1) of the groups listed in paragraph (e) of this subsection shall be considered a separate family unit;~~

~~(g) The annual countable resources of a family unit shall not exceed:~~

~~1. $2,000 for an individual;~~

~~2. $4,000 for a family unit size of two (2); and~~

~~3. Fifty (50) dollars for each additional family unit member;~~

~~(h) Countable resources shall be reduced by unpaid medical expenses of the family unit to establish eligibility; and~~

~~(i) The patient or family unit's gross income shall not exceed the federal poverty limits published annually in the Federal Register and in accordance with KRS 205.640.~~

~~(2) Except as provided in subsection (3) of this section, total annual gross income shall be the lessor of:~~

~~(a) Income received during the twelve (12) months preceding the month of receiving a service; or~~

~~(b) The amount determined by multiplying the patient's or family unit's income, as applicable, for the three (3) months preceding the date the service was provided by four (4).~~

~~(3) A work expense for a self-employed patient shall be deducted from gross income if:~~

~~(a) The work expense is directly related to producing a good or service; and~~

~~(b) Without it the good or service could not be produced.~~

~~(4) A hospital shall notify the patient or responsible party of his eligibility for indigent care.~~

~~(5) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6) months without another determination.~~

~~Section 10. Indigent Care Eligibility Determination Fair Hearing Process. (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 9 of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.~~

~~(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.~~

~~(3) A fair hearing regarding a patient's indigent care eligibility determination shall allow the individual to:~~

~~(a) Review evidence regarding the indigent care eligibility determination;~~

~~(b) Cross-examine witnesses regarding the indigent care eligibility determination;~~

~~(c) Present evidence regarding the indigent care eligibility determination; and~~

~~(d) Be represented by counsel.~~

~~(4) A hospital shall render a fair hearing decision within fourteen (14) days of the hearing and shall provide a copy of its decision to:~~

~~(a) The patient or responsible party who requested the fair hearing; and~~

~~(b) The department.~~

~~(5) A fair hearing process shall be terminated if a hospital reverses its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.~~

~~(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.~~

~~Section 11. Indigent Care Reporting Requirements. (1) On a quarterly basis, a hospital shall collect and report to the department indigent care patient and cost data.~~

~~(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.~~

~~Section 12. Merged Facility. If two (2) separate entities merge into one (1) organization and one (1) of the merging entities has disproportionate status and the other does not, the department shall retain for the merged entity the status of the entity which reported the highest number of Medicaid days paid.~~

~~Section 13. Incorporation by Reference. (1) The following material is incorporate by reference:~~

~~(a) "The Disproportionate Share Hospital (DSH) Program Manual", January 2008 edition; and~~

~~(b) The "DSH-001, Application for Disproportionate Share Hospital (DSH) Program", March 2007 edition.~~

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

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 28, 2018

FILED WITH LRC: November 30, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes disproportionate share hospital fund distribution provisions in accordance with KRS

205.639 and 205.640.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid program policies for disproportionate share hospital fund distributions.

(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 implementing state and federal requirements relating to disproportionate share hospital fund distributions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by implementing state and federal requirements relating to disproportionate share hospital fund distributions.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation implement House Bill 289 from the 2018 Regular Session. House Bill 289 abolished the previous DSH payment methodology and implemented a new DSH payment methodology. The administrative regulation is amended to include new definitions of "base year", "hospital-specific DSH limit", "initial disproportionate share hospital payment", "Medicaid disproportionate share hospital survey", "Medicaid inpatient utilization rate", and "total uncompensated care costs". Additional changes align the DSH payment methodology with KRS 205.639, 205.640, 205.6401, and 205.6403 by allowing the department to adjust total uncompensated care costs, establish provisions relating to initial and final DSH survey submission, implement requirements for when a hospital does not have 12 months of cost report data, establish appeals provisions for DSH payments, establish DSH payment redistribution provisions, and clarify that DSH payments are contingent upon federal financial participation and approval and the availability of state funds.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to implement House Bill 289 from the 2018 General Assembly and conform the department's administrative regulations and processes to the new requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by further implementing and clarifying the requirements established pursuant to KRS 205.639, 205.640, 205.6401, and 205.6403.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by further implementing and clarifying the DSH payment methodology established pursuant to House Bill 289.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to all inpatient acute care hospitals reimbursed by a diagnosis related grouper methodology. Currently, there are approximately sixty-five (65) acute care hospitals participating in the Kentucky Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No compliance action is mandated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Inpatient acute care hospitals will be reimbursed via a methodology designed to more accurately capture and reflect their costs.

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

(a) Initially: The amendment does not result in additional costs to the Department for Medicaid Services for the first year.

(b) On a continuing basis: The amendment does not result in additional costs to the Department for Medicaid Services for subsequent years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 447 Subpart E.

2. State compliance standards. KRS 205.639 to 205.6403, KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Requires that payments take into account hospitals that serve a disproportionate share of low income patients.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.639, 205.640, 205.6401, and 205.6403 authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no revenue above the current revenue level being generated for the first year for state or local government due to the amendment to 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? DMS anticipates no revenue above the current revenue level being generated in subsequent years for state or local government due to the amendment to this administrative

regulation.

(c) How much will it cost to administer this program for the first year? The amendment does not result in additional costs to the Department for Medicaid Services for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment does not result in additional costs to the Department for Medicaid Services for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(Amendment)

910 KAR 1:240. Certification of assisted-living communities.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793

STATUTORY AUTHORITY: KRS 194A.050(1), (9), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires 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 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

Section 1. Definitions.

(1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Ambulatory" means the ability to walk without assistance.

(3) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(4) "Assisted-living community" is defined by KRS 194A.700(4).

(5) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(6) "Client", "resident", or "tenant" is defined by KRS 194A.700(5).

(7) "Client's designated representative" means a person identified in a document signed and dated by the client, client's guardian, or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(8) "Danger" is defined by KRS 194A.700(6).

(9) "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

(10) "Instrumental activities of daily living" is defined by 194A.700(9).

(11) "Licensed healthcare professional" is defined by KRS 216.300(1).

(12) "Living unit" is defined by KRS 194A.700(10).

(13) "Mobile non-ambulatory" is defined by KRS 194A.700(11).

(14) "Plan of correction" is defined by KRS 194A.700(12).

(15) "Statement of danger" is defined by KRS 194A.700(13).

(16) "Statement of noncompliance" is defined by KRS 194A.700(14).

(17) "Temporary condition" means a condition that affects a client as follows:

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or

(b)1. The client loses mobility after entering a lease agreement;

2. The client is not expected to regain mobility;

3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and

4. The assisted-living community has a written plan in place to ensure that the client is not a danger.

Section 2. Application and Fees for Initial Certification Review.

(1) For initial certification an applicant shall, at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11);

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable application[~~certification~~] fee:

1. In the amount of $1,000 plus sixty (60) dollars per unit requested to be certified, according to the DAIL-ALC-1, Assisted-Living Community Certification Application, for applications submitted for certification beginning July 1, 2019[~~Assessed by the department in accordance with KRS 194A.707(8)~~];

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) The applicant shall notify the department upon occupancy of five (5) residents in the assisted-living community.

Section 3. Application and Fees for Annual Certification Review. The department shall renew a certification if an assisted-living community:

(1) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(2) Submits to the department annually by July 1:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

(c) The nonrefundable annual application and certification fee, beginning July 1, 2019, in the amount of $500 plus sixty (60) dollars per certified unit that shall be:

1. Made payable to the Kentucky State Treasurer; and

2. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621[~~required by Section 2(1)(e) of this administrative regulation~~].

Section 4. Change in an Assisted-Living Community.

(1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be sixty (60)[~~twenty (20)~~] dollars per each additional unit.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by a local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3 of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c).

Section 7. On-Site Review of an Assisted-Living Community.

(1) (a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records in accordance with subsection (3) of this section;

(c) Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4);

(d) Documentation of:

1. Completion of employee orientation:

a. Pursuant to KRS 194A.719(1); and

b. Within ninety (90) days of the date of hire; and

2. Annual in-service education pursuant to KRS 194.719(2);

(e) Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

(f) Review of client records in accordance with subsection (4) of this section;

(g) Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(h) Review of an assisted-living community's written service provision and practices in accordance with subsection (5) of this section; and

(i) Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10).

(3) Review of Employment Records.

(a) During the on-site review, the following employment records shall be reviewed, except as provided in paragraph (b) of this subsection:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal record check that shall:

a. Be requested in accordance with KRS 216.789(3);

b. Be applied for no sooner than forty-five (45) days prior to but no later than seven (7) days following an employee's first day of work;

c. Be checked every other year through the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;

d. Include a criminal record check upon hire from any state in which the employee lived outside of Kentucky in the last three (3) years; and

e. Include a criminal record check at least every other year from the state in which the employee resides if the employee maintains residency outside of Kentucky; and

3. A check of the central registry, the adult protective services caregiver misconduct registry, and nurse aide[~~Abuse~~] registry that shall:

a. Be performed on an employee upon the initial date of hire and at least annually thereafter; and

b. Show that the employee was not found on the registries.

(b) An assisted living community may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of this subsection.

(4) Review of Client Records. During the on-site review, the following client records shall be reviewed:

(a) A completed client functional needs assessment that shall:

1. Be completed:

a. Upon move in;

b. Once every twelve (12) months thereafter; and

c. As needed due to a change in function or condition;

2. Be administered by a person with at least:

a. A bachelor's degree in health or human services[~~service~~] or a related field;

b. An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or

c. A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments;

3. Assess to ensure the client meets the eligibility requirements for assisted-living pursuant to KRS 194A.711 and 194A.700(2);

4. Reflect the client's ability to perform activities of daily living and instrumental activities of daily living pursuant to KRS 194A.700(2)[~~194A.705(5)~~]; and

5. Be provided to the client pursuant to KRS 194A.705(5)[~~(a)~~];

(b) Personal preferences and social factors that shall be updated at least every two (2) years;

(c) A signed lease with all attachments;

(d) Documentation of a client's designated representative, if applicable; and

(e) Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d).

(5) Review of Written Service Provision and Practices. The on-site review shall review an assisted-living community's written service provision and practices related to:

(a) Assistance with self-administration of medication in accordance with KRS 194A.705(1)(d), which, for medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but shall not exceed the following staff actions if the client requests assistance:

1. Providing the client with a medication reminder;

2. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

3. Opening the medication container or dosage package, but not handling or removing the medication;

(b) Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

(c) Documentation in a client's file:

1. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:

a. Requested of the client by the assisted-living community; and

b. That states the client has a temporary condition pursuant to KRS 194A.711(1); and

2. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided;

(d) Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community if the assisted-living community:

1. Ensures a client's functional needs assessment that:

a. Reflects the client's abilities as specified in subsection (4)(a)4 of this section; and

b. Shall be updated at least annually; and

2. Complies with the requirements of KRS 216.595; and

(e) Compliance with a department approved waiver request in accordance with Section 8 of this administrative regulation.

(6) The department may, pursuant to KRS 194A.707(10), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(7) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Waiver of Building Requirements. (1) Pursuant to KRS 216.595(3), an assisted-living community may request a waiver from the department regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.

(2) The department shall:

(a) Review the waiver request for approval; and

(b) Not waive the building and life safety codes established in KRS 194A.703(3).

(3) An assisted-living community shall not alter the building requirements established in KRS 194A.703(1) and (2) without department approval.

Section 9. Assisted-living On-Site Review Findings.

(1) The department shall:

(a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction; and

2. Unless the finding is due to a client being a danger pursuant to Subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.

(b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.

(3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:

(a) Whether the plan of correction is approved or not approved; and

(b) The reasons for the department's decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and of the following rights[~~with the~~]:

(a) The opportunity for an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 12 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section 7(7) of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 10(2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10).

Section 10. Denial and Revocation of Certification.

(1) Certification shall be denied or revoked if:

(a) 1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 9(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

(a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;

(d) Fails to implement its most recent approved plan of correction:

1. Under current ownership; and

2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;

(e) Fails to comply with one (1) of the following requirements if

the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 9(9) of this administrative regulation:

1. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:

a. Email;

b. Facsimile transmission;

c. Delivery to the department by hand;

d. United States mail; or

e. Courier service; or

2. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

(i) Email;

(ii) Facsimile transmission;

(iii) Delivery to the department by hand;

(iv) United States mail; or

(v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 12 of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a) 1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5) (a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 12 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723.

(b) The fine shall be paid as specified in Section 11(1) of this administrative regulation.

Section 11. Collection of Fees and Fines.

(1) An entity or business found to be in violation of KRS 194A.723 and[~~pursuant to KRS 194A.724~~] assessed a penalty pursuant to KRS 194A.724 shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be $250.

Section 12. Right to Appeal Decision and Hearings.

(1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen (15) days.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", 06/2015;

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", 10/2015;

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction", 2/09; and

(d) "DAIL-ALC-4, Statement of Danger", 06/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHANNON GADD, Commissioner
ADAM MEIER, Secretary

APPROVED BY AGENCY: December 4, 2018

FILED WITH LRC: December 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis W. Sosa, email: Phyllis.sosa@ky.gov, Phone: (502) 564-6930; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the initial and annual certification review process for assisted living communities including the on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, the appeal process, and the application and certification fees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the requirements for certification of assisted-living communities including resident eligibility, application, application review, components of the lease agreement, living unit and physical plant requirements, live safety code requirements, employee requirements, services, and the application and certification fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the composition and functions of the assisted-living community certification requirements as specified in KRS 194A.700-729.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of certification for the certification of assisted-living communities.

(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 adds the application and certification fees to 910 KAR 1:240 in compliance with 194A.707(9) (effective July 1, 2019), corrects the name of the nurse aid registry and makes technical corrections to the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to continue to assess fees associated with the application and certification of new and existing assisted living communities. During the 2018 legislative session, the fees established in KRS 194A.707(9) were removed, and the cabinet was granted authority to promulgate administrative regulations to establish the assisted-living community certification fees, not to exceed costs of the program to the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing application and certification fees in compliance with KRS 194A.707(9).

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the application and certification fees for assisted living community certification, and will assist in offsetting the program deficit. The department has been operating the assisted living community certification process since July 2000. The fees have remained the same since the program's inception, and the department operates the program in a deficit. The amendment to this administrative regulation will increase the fees to assist in offsetting most of the deficit. The total cost of operating the assisted living certifications, based on FY 18 budget, is $356,827.89. The fees as amended will generate $355,220.00. The program will still operate at a small deficit of $1,607.89.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the 124 certified assisted living communities and three (3) communities that have applied for initial certification.

(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 affected by this administrative regulation will not have any additional requirements placed upon them. They will continue to submit the application and certification fees as currently required. They will have an increase in fees due to the deficit that the program currently sustains, as the certification fees have not been increased since the inception of the certification requirements in July 2000.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees will be increased. Currently all applicants pay $20 per living unit with a minimum of $300 and a maximum of $1,600. This amendment includes an application fee for initial certification of $1,000, an annual application fee of $500, and a certification per living unit of $60 for initial and renewal applications. This increase is based upon the expenditures of the department to operate the application and certification process for assisted living communities statewide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amended administrative regulation, assisted living communities will continue to have an initial review and annual review, to ensure compliance with the requirements of KRS 194A.700-194A.729 and this administrative regulation. Compliance with the requirements allows the business entity to continue to market, advertise, and operate as an assisted living community.

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

(a) Initially: The cost to implement the amendment to this administrative regulation is $356,827.89 annually and may fluctuate dependent upon new applications for certification and where they are located within the state.

(b) On a continuing basis: The cost to implement the amendment to this administrative regulation is $356,827.89 annually and may fluctuate dependent upon new applications for certification and where they are located within the state.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sole funding source for the implementation and ongoing enforcement of this administrative regulation is the initial and annual application and certification fees obtained from the assisted living communities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment is solely to establish the application and certification fees in this administrative regulation, due to the change in KRS 194A.707(9) giving the cabinet authority to establish the fees by administrative regulation, not to exceed the cost of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment is solely to establish the application and certification fees in this administrative regulation, due to the change in KRS 194A.707(9) giving the cabinet authority to establish the fees by administrative regulation, not to exceed the cost of the program. The fees have been increased from what had been allowed in KRS 194A.707(9) as established in 2000 due to the department having operated this program and sustaining a deficit since its inception.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutes that authorize the action taken by this administrative regulation are KRS 194A.050(1); 194A.707(1) and (9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate an estimated $355,220.00 for CHFS in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an estimated $355,220.00 for CHFS in subsequent years. This is dependent upon the total number of assisted living communities that apply for initial or annual certification.

(c) How much will it cost to administer this program for the first year? The department currently operates the assisted living community certification application and review process at a cost of $356,827.89.

(d) How much will it cost to administer this program for subsequent years? The cost to operate in subsequent years is dependent upon the number of applicants, the number of units to be certified, and the location of the assisted living community applying. If the number remains constant, the cost to operate will remain at $356,827.89.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:140. Foster care and adoption permanency services.

RELATES TO: KRS 2.015, 194A.005(1), 199.011(3), (4), (9), 199.462, 199.467, 199.555, 199.557, 199.801, 387.025, 527.100, 527.110, 600.020[~~(2), (7), (8)~~], 610.110, 610.125, 610.127, 620.020(1), (11), 620.060, 620.090, 620.140, 620.180, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.467 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty-four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty-four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions.

(1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Age or developmentally appropriate" is defined by KRS 600.020(2).

(3) "Cabinet" is defined by KRS 194A.005(1), 199.011(3) and 600.020(7).

(4) "Case permanency plan" is defined by KRS 620.020(1).

(5) "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e)[~~(d)~~]; or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6) "Concurrent planning" means the cabinet simultaneously plans for:

(a) The return of a child in the custody of the cabinet to the child's parent; and

(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. 675(5)(E).

(7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(8) "Parent" is defined by 42 U.S.C. 675(2).

(9) "Reasonable efforts" is defined by KRS 620.020(11).

(10) "Relative" means an individual related to a child by blood, marriage, or adoption.

(11) "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty-four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning.

(1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

(a) Have been unsuccessful; or

(b) Are not required under the provisions of KRS 610.127.

(2)[~~A child shall be removed from the child's home if:~~

~~(a) An emergency custody order has been obtained pursuant to KRS 620.060;~~

~~(b) A temporary custody order has been obtained pursuant to KRS 620.090; or~~

~~(c) A court orders the removal pursuant to KRS 620.140(1)(c).~~

~~(3) Upon removal of a child from the child's home, placement shall be:~~

~~(a) Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and~~

~~(b) Closest in proximity to the child's home, in accordance with KRS 199.801.~~

~~(4)~~] In the provision of permanency services, the cabinet shall meet the requirements of the:

(a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or

(b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7), 671(a)(18), and 1996b.

(3)[~~(5)~~] An absent parent search shall:

(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;

(b) Be conducted to gather as much information as possible related to the person and the person's location, which may include:

1. Date of birth;

2. Social Security number;

3. Present or previous employers;

4. Present or most recent address; and

(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.

(4)[~~(6) If a relative or fictive kin placement is in the best interest of the child, the cabinet shall:~~

~~(a) Use an absent parent search to locate a relative;~~

~~(b) Discuss with the relative or fictive kin the option to pursue approval as a foster parent in accordance with 922 KAR 1:350 and document the relative's decision or fictive kin's decision in the case file using the Relative and Fictive Kin Caregiver Agreement.~~

~~1. A relative's decision or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.~~

~~2. If a relative or fictive kin declines to pursue approval as a foster parent prior to accepting custody of a child, the relative or fictive kin shall not have another opportunity to pursue being a foster parent at a later time in the child's placement due to ineligibility under 42 U.S.C. 672;~~

~~(c) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive head trauma in accordance with KRS 199.462;~~

~~(d) Provide information to the relative and fictive kin on how to recognize and report child abuse and neglect;~~

~~(e) Conduct background checks on the relative or fictive kin pursuant to 922 KAR 1:490; and~~

~~(f) Complete a home evaluation with consideration given to the relative's or fictive kin's:~~

~~1. Willingness and ability to:~~

~~a. Protect the child from abuse or neglect;~~

~~b. Participate in the child's case permanency plan;~~

~~c. Access:~~

~~(i) Transportation;~~

~~(ii) Telephone;~~

~~(iii) Medical services;~~

~~(iv) First aid supplies; and~~

~~(v) School;~~

~~d. Provide full-time care;~~

~~e. Provide for the child's sleeping and eating;~~

~~f. Maintain adequate heat and ventilation in the home;~~

~~g. Use active smoke detectors in the home; and~~

~~h. Assure the child's inaccessibility to:~~

~~(i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12) applies;~~

~~(ii) Alcoholic beverages;~~

~~(iii) Poisonous materials;~~

~~(iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;~~

~~(v) Unsupervised contact with the birth parent; and~~

~~(vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and~~

~~2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.~~

~~(7)~~] The cabinet shall not be obligated to search for or seek fictive kin as a placement for a child.

(5)[~~(8) A relative or fictive kin who accepts custody of a child removed from the child's home of origin by a court shall not be entitled to reimbursement in accordance with 922 KAR 1:350, Section 10.~~

~~(9)~~] If the case conference held in compliance with KRS 620.180(2)(a)1 results in the child being placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan, using the DPP-1281, Family Case Plan.

(6)[~~(10)~~] The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

(7)[~~(11)~~] Concurrent planning shall be considered:

(a) During development of the case permanency plan; and

(b) At the six (6) month case review.

Section 4. Permanency Goals.

(1) A permanency goal for a child who has been removed from the child's home of origin by a court shall be established according to the particular needs and best interest of the child.

(2) A permanency goal shall include one (1) of the following:

(a) Return to parent;

(b) Adoption;

(c) Permanent relative placement;

(d) Legal guardianship; or

(e) Another planned permanent living arrangement.

Section 5. Return to Parent.

(1) The cabinet shall recommend to the court that a child who has been removed from the child's home of origin by the court is returned to the parent if the cabinet determines:

(a) A family has made sufficient progress toward completing the case permanency plan; and

(b) Return to the parent is in the best interest of the child.

(2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:

(a) A change in the permanency goal;

(b) Termination of parental rights; or

(c) A civil action in support of the child's permanency goal.

(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption.

(1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

(a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or

(b) The cabinet pursues involuntary termination of parental rights:

1. Pursuant to KRS 620.180(2)(c)3 or 625.090; or

2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:

(a) A relative or fictive kin placement has been secured;

(b) Termination is not in the best interest of the child, for a compelling reason:

1. Documented in the case permanency plan; and

2. Monitored on a continual basis; or

(c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.

(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1) or a case review in accordance with KRS 620.180(2)(c)1 and 2.

Section 7. Permanent Relative Placement. The permanency goal for a child who has been removed from the child's home of origin by a court shall be permanent custody if:

(1) Return to the parent is not in the child's best interest; and

(2) The cabinet determines that a relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship.

(1) The permanency goal for a child who has been removed from the child's home of origin by a court shall be legal guardianship if the cabinet determines that:

(a) Return to the parent or adoption is not in the child's best interest;

(b) There is an identified adult, including fictive kin, willing to seek legal guardianship of the child; and

(c) Legal guardianship by the adult identified in paragraph (b) of this subsection is in the child's best interest.

(2) Legal guardianship shall be requested pursuant to KRS

387.025.

Section 9. Another Planned Permanent Living Arrangement.

(1) The permanency goal for a child in the custody of the cabinet who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative or fictive kin, and the child has been placed on a national adoption register;

(b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;

(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;

(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and

(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.

(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child placed with a private child-caring agency.

Section 10. Permanency Services.

(1) The cabinet shall provide services for a child who has been removed from the child's home of origin by a court so that permanency is achieved.

(2) Permanency services may include:

(a) Ongoing case work and monitoring of the family to:

1. Maintain the child safely in the child's home; and

2. Ensure safe return of the child if the goal is return to the parent;

(b) Independent living services and programming for the child in accordance with 42 U.S.C. 677;

(c) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;

(d) Post-finalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;

(e) Post-adoption placement stabilization services as described in 922 KAR 1:530; or

(f) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal.

(3)[~~Other~~] Cabinet resources for a prospective or existing permanent relative or fictive kin placement shall be established in 922 KAR 1:565[~~may include:~~

~~1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;~~

~~2. Health benefits for a child if an application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;~~

~~3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030;~~

~~4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available; or~~

~~5. The Child Care Assistance Program in accordance with 922 KAR 002:160~~].

Section 11. Funerals and Burials.

(1) The biological or legal parent of a child deceased while in temporary custody or committed to the cabinet, shall be responsible for funeral arrangements, unless the:

(a) Parental rights have been terminated;

(b) Parent cannot be located; or

(c) Parent is unable to make funeral arrangements.

(2) Personal and family resources, including the deceased child's trust fund and insurance in the deceased child's name, shall be exhausted prior to the approval of cabinet funds for funeral and burial expenses.

Section 12. Incorporation by Reference.

(1)[~~The following material is incorporated by reference:~~

~~(a)~~] "DPP-1281, Family Case Plan", 11/16, is incorporated by reference[~~; and~~

~~(b) "Relative and Fictive Kin Caregiver Agreement", 1/18~~].

(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.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December10, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact: Laura Begin, Phone Number: (502) 564-3703, Email: Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures for foster care and adoption permanency services that are mandated by federal and state laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through the establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation

removes content incorporated in a new administrative regulation, 922 KAR 1:565, governing the service array for a relative or fictive kin caregiver. In addition, the amendment includes updates conforming to KRS 620.180, as amended by House Bill 1 from the 2018 Regular Session (2018 Ky. Acts ch. 159), concerning case reviews. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation and align its content with the proposed new administrative regulation, 922 KAR 1:565, which consolidates the service array for a relative or fictive kin caregiver into one administrative regulation, and KRS 620.180, as amended by 2018 Ky. Acts ch. 159.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute through its alignment of permanency services with the service array offered to relative and fictive kin caregivers.

(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 permanency services with the service array offered to relative and fictive kin.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of the October 7, 2018, Statewide Foster Care FACTS, there were 9,891 children in the cabinet's custody of which 1,084 children were placed with a relative or fictive kin.

(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 will be no new or additional action required on the part of regulated entities as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Relatives and fictive kin who accept children for placement will have a service array outlined in a new administrative regulation, 922 KAR 1:565, from which they can select the legal or service options most congruent with their preferences, unique circumstances, and the needs of the children being placed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The service array for a relative or fictive kin caregiver will be outlined in one administrative regulation ensuring better clarity regarding options and cabinet practice.

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

(a) Initially: This amendment is technical and conforming in nature and is not projected to entail a new or additional cost.

(b) On a continuing basis: This amendment is technical and conforming in nature and is not projected to entail a new or additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Titles IV-B and IV-E (of the Social Security Act) funds, the federal Temporary Assistance for Needy Families Block Grant, the federal Social Services Block Grant, restricted or agency funds derived from Medicaid, and state funds are the funding sources for 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 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. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

2. State compliance standards. KRS 194A.050(1), 199.467, 620.180

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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), 199.467, 620.180, 45 C.F.R. 1355 - 1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for state or local government in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no new or additional costs to the agency to implement this administrative regulation for subsequent years.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:305. Licensure of child-caring facilities and child-placing agencies.

RELATES TO: KRS 2.015, 13B.050, 17.165(6),199.011[~~(2), (3), (4), (6), (7)~~], 199.640, 199.670, 199.990, 600.020[~~(8)- (10)~~], 610.110(6), 620.140, 42 U.S.C. 671

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), (c)

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. KRS 199.640(5)(c) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations relating to licensure for child-caring facilities and child-placing agencies. This administrative regulation governs the licensure process for child-caring facilities and child-placing agencies and the appeals process.

Section 1. Definitions.

(1) "Advisory board" means a group of citizens, approved by the board of directors, who gives advice, counsel, and support to a child-caring facility or a child-placing agency.

(2) "Cabinet" is defined by[~~at~~] KRS 199.011(3)[~~(2)~~].

(3) "Child" means:

(a) A child as:

(1)[~~is~~] Defined by[~~at~~] KRS 199.011(4) and[~~,~~] 600.020(9); or

(2) Referenced in KRS [~~(8)~~, ~~and~~] 610.110(6);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exception to the age of majority in accordance with KRS 2.015.

(4) "Child-caring facility" is defined by[~~at~~] KRS 199.011(5)[~~(6)~~] and 600.020(10)[~~(9)~~].

(5) "Child-placing agency" is defined by[~~at~~] KRS 199.011(6)[~~(10)~~].

(6) "Division" means the Division of Regulated[~~Licensed~~] Child Care, Office of the Inspector General.

(7) "Licensee" means an individual, partnership, corporation or other entity authorized to operate a child-caring facility or child-placing agency, including a board of directors and a person authorized to make application.

Section 2. Initial Application.

(1) An applicant for a license shall submit to the division[~~a~~]:

(a) A completed Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, Form OIG 136;

(b) A nonrefundable licensure fee in the amount of $100 in accordance with KRS 199.640(4)[~~designated in KRS 199.640(4)~~];

(c) A copy of the Articles of Incorporation on file with the Secretary of State, if the applicant is a corporation;

(d) A mission statement of purpose, objective, scope of service provided, and intake policy specifying the type of child to be accepted for care;

(e) A copy of the constitution and bylaws;

(f) A list of officers, board members, and advisory board members, if any, including the address and profession;

(g) The name and title of each officer and the term of office; [~~and~~]

(h) A list of staff including position or title and qualifications;

(i) Written documentation from the local authority showing compliance with local zoning requirements;

(j) Approval from the Office of the State Fire Marshal or designee; and

(k) Written documentation of an approved water and sewage system in accordance with local, county, and state laws.

(2) A license issued by the division shall be:

(a) For a specific physical location within the state;

(b) For operation by a specific licensee;

(c) Nontransferable;

(d) Approved and documented by the State Fire Marshal before a licensure survey is conducted; and

(e) Awarded if an on-site inspection, described in Section 6 of this administrative regulation, results in:

1. A determination that the applicant qualifies for licensure as established in 922 KAR 1:300 or 922 KAR 1:310; or

2. An acceptable plan of correction as described in Section 4 of this administrative regulation, if applicable.

(3) A child-caring facility or a child-placing agency operating without a license shall be subject to legal action, pursuant to KRS 199.990.

Section 3. Renewal Licensure. Relicensure[~~shall be in accordance with KRS 199.640(3), and~~] shall require the following procedures:

(1)(a) Not less than sixty (60) days prior to the date of expiration of its license, a licensee[~~the applicant~~] shall submit a:

1.[~~(a)~~] Completed Application for Licensure to Operate a Child-Caring Facility or a Child Placing Agency, Form OIG 136; and

2. Nonrefundable[~~(b)~~] licensure fee in the amount of fifty (50) dollars in accordance with KRS 199.640(4)[~~designated in KRS 199.640(3)~~].

(b) If a licensee has made application for renewal within the timeframe specified in paragraph (a) of this subsection, the existing license shall remain in effect until the division takes action on the renewal application.

(2) The applicant shall provide the following documentation to the annual inspector:

(a) A list of officers, board members, and advisory board members, if any, including address and profession;

(b) The name and title of each officer and term of office; and

(c) A list of staff that includes position or title and qualifications.

(3) The child-caring facility or child-placing agency shall comply with its mission statement, program narrative, and applicable federal and state administrative regulations in regard to the program operation.

(4) The child-caring facility or child-placing agency shall have an annual financial audit completed by an independent accounting firm or a certified public accountant.

(5) Notification of a change in the following shall be made to the division in advance to allow for approval from the division, and the State Fire Marshal or designee when applicable, before implementation:

(a) Ownership or sponsorship;

(b) Location approval documented by the State Fire Marshal or designee; or

(c) Service type provision described in 922 KAR 1:300 or 922 KAR 1:310;

(d) Increase in capacity approval documented by the State Fire Marshal or designee; and

(e) The addition of a new building or converting of administrative space to living space approval documented by the State Fire Marshal or designee.

(6) A renewal license shall be issued by the division if the division determines the applicant qualified for renewal licensure in accordance with 922 KAR 1:300 or 922 KAR 1:310.

(7) The child-caring facility or child-placing agency shall post its license in a place visible to the public.

(8) A license shall not be sold or transferred.

(9) Change of ownership.

(a) A prospective new owner shall submit:

1. A Licensing and Regulation Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, form OIG 136;

2. A fee as specified in Section 2(1)(b) of this administrative regulation; and

3. If the child-caring facility increases capacity, documentation of approval by the Office of the State Fire Marshal or designee.

(b) The division shall perform an on-site inspection, pursuant to KRS 199.640(3) and (5).

(c) The effective date of a license granted on an application for change of ownership shall be:

1. For a child-caring facility or a child-placing agency that meets requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310, the date the child-caring facility or the child-placing agency is acquired by the new owner;

2. For a child-caring facility or a child-placing agency that does not meet requirements, the date that compliance with this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310 is achieved; or

3. For a child-caring facility requesting an increase in capacity,

not before the approval date issued by the State Fire Marshal or designee.

(10) Changes to the child-caring facility or the child-placing agency.

(a) A licensee shall notify the division, in writing, if there is a change to the child-caring facility or child-placing agency, as described in subsection (5) of this section.

(b) The notification shall be signed by each owner listed on the license application.

(c) A fee shall not be charged.

Section 4. Corrective Plans.

(1) The division shall perform an on-site inspection, as required by KRS 199.640(3) and (5). A regulatory violation of the standards identified in 922 KAR 1:300 or 922 KAR 1:310 during inspection shall be reported to the child-caring facility or the child-placing agency in a written statement of deficiency. An applicant or licensee may request the opportunity to informally dispute a deficiency, pursuant to KRS 199.670(4).

(2) Unless a request for the opportunity to informally dispute a deficiency has been made, the child-caring facility or child-placing agency shall submit, within ten (10) days of receipt of the statement of deficiency, a written plan for the elimination or correction of a violation. The plan shall detail:

(a) Specific action undertaken to correct a violation;

(b) The date action was initiated; [~~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.

(3) The division shall review the plan and notify the child-caring facility or the child-placing agency, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the license, as described in Section 7 of this administrative regulation.

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

(5) A child-caring facility or a child-placing agency notified of unacceptability of its plan shall, within ten (10) days of notification:

(a) Submit an amended plan; or

(b) Have its license revoked or denied.

(6) The cabinet shall not review or accept more than three (3) corrective action plans from a licensee in response to the same written statement of deficiency.

(7) If a licensee 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 license.

(8) If the cabinet[~~for Health and Family Services~~] proposes to deny, suspend, or revoke an application or licensure, the division shall notify the applicant or licensee, in writing, of the right to request an informal dispute resolution meeting as required by KRS 199.670(2).

(9)[~~(7)~~] A license shall be issued as required by[~~pursuant to~~] KRS 199.640(3)[~~(4)~~], if the child-caring facility or the child-placing agency has met the requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310.

Section 5. Fees.

(1) A licensing fee shall be charged as pursuant to KRS 199.640(4).

(2) A licensing fee shall be:

(a) Submitted with the OIG-316;

(b) Made payable to the Kentucky State Treasurer; and

(c) Paid by:

1. Certified or cashier's check;

2. Money order;

3. A prepaid account established with the cabinet; or

4. Electronic fund transfer, including credit or debit card, once the function becomes available[~~A check or money order payable to the Kentucky State Treasurer shall be attached to the licensure application.~~

~~(3) A fee shall not be refunded if an inspection has been made by the division or the State Fire Marshal's Office~~].

Section 6. Inspection.

(1) A child-caring facility or a child-placing agency shall not deny access to a human services surveyor or other representative of the cabinet, after proper identification, to make an inspection for determining compliance with the requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310. Denial of access shall result in an immediate revocation of its license.

(2) A human services surveyor or other representative of the cabinet shall make an unannounced inspection of a child-caring facility or child-placing agency based on:

(a) An application for license;

(b) An application for renewal of a license;

(c) A complaint; or

(d) A follow-up visit to verify implementation of a plan of correction as described in Section 4 of this administrative regulation.

(3)(a) An unannounced inspection of a child-caring facility or a child-placing agency:

1. Shall be made during any time services are provided by the facility or agency;

2. May include the search and seizure, if necessary, of any records or paperwork. A photocopy of any record or paperwork by the surveyor is the preferred method of obtaining a copy; and

3. Shall be limited to ensure compliance with the standards set forth in:

a. KRS 199.640(5);

b. This administrative regulation; and

c. 922 KAR 1:300 or 922 KAR 1:310.

(b) The inspection of a licensed child-caring facility or a child-placing agency based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction.[~~Inspection of a licensed child-caring facility or child-placing agency shall be made as described in administrative regulations established by authority of KRS 199.640(3) and (5)(d); and~~

~~(2) A human services surveyor or other representative of the division shall have access to the child-caring facility or child-placing agency at any time.~~]

Section 7. Basis for Denial, Suspension, or Revocation.

(1) The division shall deny an application or suspend or revoke a license if the applicant or the licensee[~~: (a)~~] fails to meet the requirements of:

(a) This administrative regulation,[~~or those of~~] 922 KAR 1:300, or 922 KAR 1:310; [~~or~~]

(b) KRS 17.165(6); or

(c) 42 U.S.C. 671 and implemented federal rule[~~Has been convicted:~~

~~1. Of a sexual offense designated in KRS Chapter 510, 529.020 to 529.050, 530.020, 530.064, or 531.300 to 531.370;~~

~~2. Of a crime of abuse, neglect or exploitation of a child, as established in KRS 508.100 to 508.120; or~~

~~3. As a violent offender, established in KRS 17.165(2); or~~

~~(c) Is listed on the central registry as described in 922 KAR 1:470~~].

(2) Effect of denial or revocation. The division shall not accept an application to operate a child-caring facility or a child-placing agency from an entity that:

(a) Previously had a license denied, suspended, or revoked for a reason described in subsection (1)(b) of this section; or

(b) Within the previous five (5) years, voluntarily forfeited a license after the cabinet initiated denial or revocation action.

(3) A penalty for violation of this administrative regulation shall be determined by reference to KRS 199.990.

Section 8. Right of Appeal.

(1) If an application or license has been denied, suspended, or revoked, the division shall proceed in accordance with KRS

199.670(2) and (3).

(2) If, within fifteen (15) days after receiving notice of the division's action, the applicant or licensee requests a hearing, the division shall:

(a) Appoint a hearing officer; and

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

(3) The cabinet may take emergency action pursuant to KRS 199.670(3).

Section 9. Incorporation by Reference.

(1) "OIG 136, Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency[~~, March, 2002~~]", 12/2018, is incorporated by reference.

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, 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 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation establishes the process for initial and renewal applications for licensure, fee requirements, guidelines for corrective plans, inspection protocol and basis for denial, suspension, and revocation for child-caring and child-placing agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure licensure of child-caring and child-placing agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 194A.050(1) and 199.640(5)(a), (c).

(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 explaining the process through which child-caring and child-placing agencies obtain licensure.

(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 the fees for initial and renewal licensure. This amendment also makes updates and technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary to meet KRS 199.640(4), which authorizes the inclusion of fees within the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 199.640.

(d) How the amendment will assist in the effective administration of the statutes: KRS 199.640 requires licensure standards, and authorizes fees to be promulgated in regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 184 child-caring and child-placing agencies who are licensed by the cabinet.

(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: Child-caring and child-placing agencies are required to apply for licensure according to the regulation. This administrative regulation amendment does not change this process.

(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 imposes no new or additional costs to child-caring and child-placing agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no change in benefits for licensure.

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

(a) Initially: This is an existing program and the cabinet projects there will be no additional costs.

(b) On a continuing basis: This is an existing program and the cabinet projects there will be no additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation incorporates a fee that was formerly established in statute to offset a portion of the incurred cost to the cabinet. The licensing fees included in this administrative regulation were originally established in KRS 199.640(4) in 1982. There has been no fee increase since that time and one is not included in this amendment. Not all of the cabinet's costs for licensure and inspection of Kentucky's184 child-caring and child-placing agencies are offset by this fee, therefore the cabinet will continue to absorb a portion of the programmatic costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet is not increasing fees associated with this program at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation incorporates a fee that was formerly established in KRS 199.640(4) in 1982. Fees are not being increased through this amendment.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Health and Family Services, namely, the Department of Community Based Services, will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5)(a), (c)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:400. Supportive services.

RELATES TO: KRS 2.015, 45.237-45.241, 194A.005(1), 199.011(3), (4), 205.2003(3), 205.211, 205.703, 209.020(2), 209.130, 209A.020(1)[~~(2)~~], 600.020(1), (6), (8), 610.110(6), 620.020(1), 620.140(1)(e), 45 C.F.R. Parts 260-265, 42 U.S.C. 601-679b

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7)[~~(4)~~], 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7)[~~(4)~~], which authorizes the cabinet to perform services necessary for the protection of children. This administrative regulation establishes standards for provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child's home through the cabinet, to the extent funds are available.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), 600.020(7), 209.020(2), and 209A.020(1)[~~(2)~~].

(2) "Child" means:

(a) A child[~~is~~] defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(3) "Intensive family-based support services" means the goal of keeping the family united or if removal of a child is necessary, placing the child in the least restrictive setting consistent with his or her individual needs.

(4) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families Program, a money payment program for a child who is deprived of parental support or care, as described at 921 KAR 2:006, Section 1(9).

(5) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience, and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(6) "Paraprofessional attendant" means a person with a high school diploma or bachelor's degree and training related to the services he or she provides, under the supervision of a licensed professional.

(7) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level.

(8)[~~"Relative placement support benefit" means a monetary benefit to address a child's immediate needs during the cabinet's placement of the child with a nonparental relative.~~

~~(9)~~] "Safety net services" means:

(a) A short-term intervention or maintenance service to help an individual or family develop and maintain skills and abilities to prevent out-of-home placement for a child in that family; or

(b) Monetary benefits to assist in maintaining self-sufficiency.

(9)[~~(10)~~] "Targeted case management" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services.

Section 2.[~~In addition to the definition in Section 1(2), a child shall include a person:~~

~~(1) Age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6); or~~

~~(2) Under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.~~

~~Section 3.~~] Child Care Services. The cabinet may refer[~~an individual or family~~] for child care services pursuant to 922 KAR 002:160 any[~~if the~~] individual or family who:

(1) Makes a request for assistance for child care expenses;

(2) Needs child care for protection or prevention of child abuse, neglect, or exploitation; or

(3) Needs child care for a child of a teen parent attending high school.

Section 3[4]. Child Support Service. The cabinet may make a referral for child support services, by means of the process described at 921 KAR 1:380 on behalf of a child entering out-of-home care through a:

(1) Voluntary commitment agreement; or

(2) Court order assigning legal responsibility for the child to the cabinet.

Section 4[~~5~~]. Intensive Family-based Support Services. (1) Intensive family-based support services shall be provided through a contractual agreement, for the purpose of:

(a) Stabilizing a child in the child's own home or foster home;

(b) Preventing further hospitalization or institutionalization; and

(c) Enabling a child and the child's family to improve their lives.

(2) An intensive family-based support service may be provided to a child with one (1) or more of the following:

(a) Intellectual or developmental disability;

(b) Emotional or behavioral disturbance;

(c) Dual diagnosis;

(d) Risk of institutionalization; or

(e) Need for aftercare services following release from an institution or other highly structured setting.

(3) Except for the assessment and discharge planning,

intensive family-based support services shall not start while a child is in a hospital or an institution.

(4) Intensive family-based support services shall be available to a family with a child living in a:

(a) Biological home;

(b) Foster home; or

(c) Adoptive placement.

(5) The cabinet may make a referral for intensive family-based support services which may include the following:

(a) A comprehensive assessment, to include:

1. Review of medical, psychiatric, social, and educational assessments conducted within the last twelve (12) months; and

2. An in-home assessment;

(b) If appropriate, discharge planning provided through the service provider's involvement with a foster or biological family, the child, and the hospital or institution to ensure:

1. A coordinated approach upon discharge; and

2. That communication is clear regarding behaviors, goals, and recommended interventions;

(c) Planned support services provided to assist with routine day-to-day activity that is crucial to stabilization of a child within the family unit;

(d) Family intervention services, such as behavioral and family counseling, to assist a child and family in:

1. Identifying and resolving issues underlying the dysfunctional behaviors within a family; or

2. Eliminating barriers to change;

(e) Respite care services provided to allow a biological or a foster parent relief for a designated period of time from the stress of caring for an emotionally disturbed or physically disabled child or to allow time to attend to other needs;

(f) A paraprofessional attendant to provide direct in-home services to a child, or a biological or foster parent, as identified in the case plan;

(g) Purchase of care in an alternate living unit, as a component of an intensive family-based support services contract;

(h) Art or music therapy from a qualified professional;

(i) Educational consultation and support;

(j) Crisis intervention;

(k) Skill development; or

(l) Other service identified in the case plan.

(6) The type, frequency, intensity, and duration of services shall be determined according to each individual situation.

(7) A family case plan shall be developed to address:

(a) Family strengths and needs;

(b) Goals, objectives, and tasks;

(c) Time frames; and

(d) Anticipated outcomes.

Section 5[~~6~~]. Safety Net Services. (1) Safety net services shall be provided for a former K-TAP recipient who:

(a) Has total income at or below 200 percent of federal poverty level; and

(b) Is no longer eligible for K-TAP benefits due to:

1. Failure to comply with Kentucky Works requirements of 921 KAR 2:370, Section 7(2); or

2. Reaching benefit time limitations established at 921 KAR 2:006, Section 21.

(2) A safety net service shall include contact with the family and may address the following:

(a) Assistance to the individual or family to identify the problem and resources available to improve the situation;

(b) Linkage to the appropriate resources; or

(c) Intervention in a crisis situation including:

1. Fuel shortage;

2. Utility shutoff;

3. Insufficient food, clothing, housing, or employment; or

4. Response to an inquiry regarding the family situation.

(3)(a) The cabinet may authorize fund distribution to an appropriate vendor, in order to provide for a family's safety net services.

(b) Up to a total of $635 may be paid over four (4) months during the twelve (12) month period following an event specified in subsection (1)(b) of this section.

Section 6[~~7~~]. Medicaid Services. (1) Rehabilitative services shall be provided to a Medicaid-eligible child under the age of twenty-one (21) who meets the Department for Community Based Services' conditions and circumstances as a child in the custody of, or under the supervision of, or at risk of being in the custody of, the cabinet.

(2) Targeted case management services shall be provided to a Medicaid-eligible individual in accordance with 907 KAR 3:020, Section 3(1).

Section 7[~~8~~]. K-TAP Determination for Domestic Violence Victims. If a report of alleged domestic violence is made, the cabinet shall:

(1) Attempt to arrange a face-to-face interview with the alleged victim to conduct an assessment or investigation, according to the procedure established at 921 KAR 2:006, Section 25, and, if necessary, shall offer:

(a) Protective and general adult services; or

(b) Educational materials in accordance with KRS 209A.130; and

(2) Upon completion of the assessment or investigation, provide information to K-TAP whether the reported victim:

(a) Is in a domestic violence situation; and

(b) Has agreed to services.

Section 8[~~9~~]. Assessment of Minor Teenage Parents. (1) If a determination is made that a minor teenage parent is an applicant or recipient of K-TAP and is not living with an adult or legal guardian, the minor teenage parent shall be referred for an assessment of the minor teenage parent's safety, including assistance with an alternative living arrangement if necessary.

(2) The cabinet shall:

(a) Conduct a face-to-face contact with the minor teenager's parent and the minor parent's child;

(b) Conduct a face-to-face interview with the minor parent in order to assess the minor parent's current situation and the safety issues for the minor teenage parent and child;

(c) Determine if the minor teenager's parent or guardian accepts the minor teenager's living arrangement;

(d) Refer the family to the appropriate services; and

(e) Provide the following to the Division of Family Support:

1. Identification of safety issues;

2. A recommendation regarding opening a protective or preventive services case on the family; and

3. Services to which the minor teenage parent has been referred.

Section 9.[~~10. Relative Placement Support Benefit. (1) To the extent that funds are available, the cabinet shall provide a one (1) time relative placement support benefit:~~

~~(a) To facilitate the cabinet's placement of a child with a nonparental relative as an alternative to the child's placement in foster care;~~

~~(b) If a court of competent jurisdiction has granted temporary custody of the child to the relative or the cabinet due to:~~

~~1. Child abuse or neglect by the child's biological or adoptive parent; or~~

~~2. The death of both parents;~~

~~(c) That will provide for a child's immediate needs, such as:~~

~~1. Clothing;~~

~~2. School supplies;~~

~~3. Additional furniture; or~~

~~4. A deposit for a larger apartment; and~~

~~(d) That is equal to or does not exceed the amount for the appropriate number of eligible children as follows:~~

~~Number of Eligible Children~~	~~Payment Amount~~
~~1~~	~~$350~~
~~2~~	~~$700~~
~~3~~	~~$1,050~~
~~4~~	~~$1,400~~
~~5~~	~~$1,750~~
~~6 or more~~	~~$2,100~~

~~(2)(a) The relative placement support benefit shall be issued by check or electronic fund transfer directly to:~~

~~1. The relative with whom the child is placed; or~~

~~2. A vendor providing the needed service or item listed in subsection (1)(c) of this section.~~

~~(b) Before the provision of the relative placement support benefit, the relative or the vendor shall provide tax status and contact information for accounting of the benefit's disbursement.~~

~~(3) The cabinet shall indicate the need for a relative placement support benefit in the relative's home evaluation in accordance with 922 KAR 1:140.~~

~~(4) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:~~

~~(a) Placed with a relative whose household income is at or below 200 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or~~

~~(b) Determined eligible for K-TAP.~~

~~Section 11.~~] Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 10[~~12~~]. State Plan. A copy of the state's Title IV-A Temporary Assistance for Needy Families state plan may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child's home through the cabinet, to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the provision of supportive services to a family receiving ongoing case management services or to safely maintain a child in the child's home through the cabinet, to the extent funds are available.

(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 supportive services for vulnerable children and families to the extent funds are available.

(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 supportive services for vulnerable children and families to the extent funds are available.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes the relative placement support benefit due to the benefit's incorporation in a new administrative regulation, 922 KAR 1:565, governing the services array for a relative or fictive kin caregiver. In addition, the amendment updates a provision concerning domestic violence services in accordance with House Bill 309 from the 2017 Regular Session (2017 Ky. Acts ch. 191). Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation and align its content with the proposed new administrative regulation, 922 KAR 1:565, which consolidates the service array for relative and fictive kin caregivers into one administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute through its alignment of supportive services with the service array offered to relative and fictive kin caregivers.

(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 supportive services with the service array offered to relative and fictive kin.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 500 relative placement support benefits are issued annually.

(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 will be no new or additional action required on the part of regulated entities as a result of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Relatives who accept children for placement will have a service array outlined in a new administrative regulation, 922 KAR 1:565, from which they can select the legal or services option(s) most congruent with their preferences, unique circumstances, and the needs of the children being placed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The service array for a relative or fictive kin caregiver will be outlined in one administrative regulation ensuring better clarity regarding options and cabinet practice.

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

(a) Initially: This amendment is technical and conforming in nature and is not projected to entail a new or additional cost.

(b) On a continuing basis: This amendment is technical and conforming in nature and is not projected to entail a new or additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding sources to be used for the implementation and enforcement of this administrative regulation include the federal

funds from the Temporary Assistance for Needy Families Block Grant and Social Service Block Grant, restricted or agency funds (derived from Medicaid), and state funds.

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

(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 or 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. 260-265, 42 U.S.C. 601-679b

2. State compliance standards. KRS 194A.050(1), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 260-265, 42 U.S.C. 601-679b

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(4), 605.150, 45 C.F.R. 260-265, 42 U.S.C. 601-679b

(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 new revenue for the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no new or additional costs to the agency to implement this administrative regulation for subsequent years.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:500. Educational and training vouchers.

RELATES TO: KRS Chapter 13B, 164.2847, 610.110(6), 620.020(5), 620.140(1)(d), 45 C.F.R. 1355.20(a), 20 U.S.C. 1001, 1002, 1087II, 42 U.S.C. 677(d)(2), (i)

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for proper administration of the cabinet and its programs. In addition, 42 U.S.C. 677(i) makes available vouchers for education and training to youths who have aged out of foster care or were adopted from foster care at age sixteen (16) or older. This administrative regulation establishes eligibility and an application process, specifies allowable uses, and provides a procedure for administrative hearings pertaining to the educational and training vouchers.

Section 1. Definitions.

(1) "Cost of attendance" is defined by 20 U.S.C. 1087II.

(2) "Educational and training voucher" means resources provided to an eligible individual to meet educational or training purposes as specified under 42 U.S.C. 677(i). (3) "Foster care" is defined by KRS 620.020(5) and 45 C.F.R. 1355.20(a).

(4) "Institution of higher education" is defined by 20 U.S.C. 1001 and 1002.

(5) "Tuition waiver" means waiver of tuition and mandatory fees for Kentucky foster or adopted children pursuant to KRS 164.2847 and 922 KAR 1:450.

Section 2. Eligibility.

(1) An individual shall be eligible to receive an educational and training voucher if the individual:

(a) Is committed to the cabinet in accordance with:

1. KRS 620.140(1)(d); or

2. KRS 610.110(6);

(b) Was adopted from foster care after attaining sixteen (16) years of age; or

(c) Left foster care upon attaining eighteen (18) years of age.

(2) An individual shall be eligible to participate in the voucher program for a maximum of five (5) years until twenty-six (26) years of age[~~maintain eligibility until twenty-three (23) years of age~~] if the individual[~~:~~

~~(a) Receives an educational and training voucher prior to reaching twenty-one (21) years of age; and~~

~~(b)~~] is enrolled in an institution of higher education and is making satisfactory progress towards completion:

(a)[~~1.~~] As determined by the institution of higher education; and

(b)[~~2.~~] In accordance with Section 3(2) of this administrative regulation.

Section 3. Application Process.

(1) To request an educational [~~education~~] and training voucher, an applicant shall submit a completed DPP-334, Request for Educational and Training Voucher Funds, to the cabinet:

(a) Upon initial application for enrollment into an institution of higher education;

(b) When the student transfers to another institution of higher education; or

(c) If a student has not been enrolled continuously at the same

institution of higher education.

(2) (a) To maintain eligibility in accordance with Section 2 of this administrative regulation, for each semester or equivalent term of instruction, the cabinet shall contact the National Student Clearinghouse to verify an applicant's enrollment in an institution of higher education.

(b) If verification cannot be obtained through the National Student Clearinghouse in accordance with paragraph (a) of this subsection, the cabinet shall notify the applicant, and the applicant shall:

1. Contact the applicant's institution of higher education; and

2. Request that written confirmation of enrollment from the institution of higher education be sent to the cabinet.

(3) If an applicant is determined ineligible by the cabinet, the cabinet shall provide notification, in writing, to the applicant stating the reason for ineligibility.

Section 4. Allowable Payments.

(1) An educational and training voucher shall be used to:

(a) Assist an eligible individual to prepare for and enter an institution of higher education, including:

1. A fee for an educational aptitude examination to qualify for or apply to an institution of higher education;

2. An entrance or application fee required by an institution of higher education;

3. An enrollment fee or deposit required by an institution of higher education;

4. Cost of an educational aptitude course to prepare the eligible individual for an examination as specified in this subsection; or

5. An expense, in addition to an expense specified in subparagraphs 2 and 3 of this paragraph, required for entrance by the institution of higher education; or

(b) Pay for the cost of attendance at an institution of higher education.

(2) An educational and training voucher shall not exceed the lesser of $5,000 per year or the total cost of attendance per year.

(3) To the extent that funds are available, the cabinet shall authorize payment for an application for an educational and training voucher to an eligible individual.

(4) In accordance with 42 U.S.C. 677(d)(2), an educational and training voucher shall not be approved for the same purpose as a tuition waiver or other student financial aid.

Section 5. Service Appeal. An applicant who is determined ineligible for an educational and training voucher shall have access to an administrative hearing in accordance with 922 KAR 1:320.

Section 6. Incorporation by Reference.

(1) "DPP-334, Request for Educational and Training Voucher Funds", 11/16, is incorporated by reference.

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

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 4, 2018

FILED WITH LRC: December 12, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, 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 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, phone (502) 564-3703, email Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility and an application process, specifies allowable uses, and provides a procedure for administrative hearings pertaining to educational and training vouchers.

(b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for proper administration of the cabinet and its programs. 42 U.S.C. 677(i) makes available vouchers for education and training to youths who have aged out of foster care or were adopted from foster care at age sixteen (16) or older. This administrative regulation outlines this process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with state statute KRS 194A.050(1) and federal code 42 U.S.C. 677.

(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 explaining the process through which an education and training voucher may be obtained and how it may be used.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the eligibility age from 23 to 26 years old to obtain an educational and training voucher, consistent with the Family First Prevention Services Act of 2018.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to meet federal law, the Family First Prevention Services Act, which extends the age an eligible individual may access educational and training voucher funds from 23 to 26 years old. This amendment is necessary to avoid negative outcomes, even possible federal financial penalties.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with state statute KRS 194A.050(1) and federal code 42 U.S.C. 677. The amendment is being made for consistency with a new federal Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is being made for consistency with the Family First Prevention Services Act.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 149 eligible individuals who receive an educational and training voucher.

(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: Eligible individuals will be able to obtain an educational and training voucher until the age of 26 instead of 23.

(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 imposes no new or additional costs on eligible individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible individuals will benefit from the increase in age to obtain an educational and training voucher, allowed by the amendment to this administrative regulation.

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

(a) Initially: This is an existing program and the cabinet projects there will be no costs. The educational and training voucher program is funded through a federal grant that requires no matching state funds.

(b) On a continuing basis: This is an existing program and the cabinet projects there will be no costs. The educational and training voucher program is funded through a federal grant that requires no matching state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is wholly funded by federal funds.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 677(d)(2), (i)

2. State compliance standards. 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 677(d)(2), (i)

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 677(d)(2), (i)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

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 002:160. 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, 605.120(5), 620.020(10), 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, 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. 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, 9857-9858q, 9902(2)

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 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 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; or
(m) Enrollment in a certified trade school or an accredited college or university.

(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 922 KAR 1:330, Section 1(5).

(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) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as a:
(a) Physician;
(b) Physician assistant;
(c) Advanced practice registered nurse;
(d) Qualified mental health professional as defined by KRS 600.020(52); or
(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(16)[~~(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.

(17)[~~(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.

(18)[~~(17)~~] "Infant" means a child who is less than one (1) year old.

(19)[~~(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.

(20)[~~(19)~~] "Parent" is defined by 45 C.F.R. 98.2.

(21)[~~(20)~~] "Part day" means child care that is provided for less than five (5) hours per day.

(22)[~~(21)~~] "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23)[~~(22)~~] "Preventive services" is defined by KRS 620.020(10).

(24)[~~(23)~~] "Provider" means the entity providing child care services, such as:
(a) A member of a limited liability corporation (LLC);
(b) The head of an organization;
(c) An owner of a corporation;
(d) A member of a partnership;
(e) An owner of a business;
(f) An individual provider; or
(g) A stockholder of a stock-holding company.

(25)[~~(24)~~] "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(26)[~~(25)~~] "Registered provider" means a child care provider who meets the requirements of 922 KAR 002:180.

(27)[~~(26)~~] "Related" means having one (1) of the following relationships:
(a) Child;
(b) Stepchild;
(c) Grandchild;
(d) Great-grandchild;
(e) Niece;
(f) Nephew;
(g) Sibling;
(h) Child in legal custody; or
(i) Child living in loco parentis.

(28)[~~(27)~~] "Responsible adult" means a person other than the applicant who is in the child's household and who is:
(a) The natural parent, adoptive parent, or stepparent; or
(b) The spouse of an individual caring for a child in loco parentis.

(29)[~~(28)~~] "School-age child" means a child who has reached the sixth birthday.

(30)[~~(29)~~] "State median income" or "SMI" means the estimated median income of households in the state.

(31)[~~(30)~~] "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:
(a) Defined by 7 U.S.C. 2012; and
(b) Governed by 921 KAR Chapter 3.

(32)[~~(31)~~] "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33)[~~(32)~~] "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements.

(1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:
1. The following is received at the cabinet or its designee's office:
a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or
b. Submission in accordance with 921 KAR 2:040, Section 1(6); or
2. The agency is contacted, if the person:
a. Has a physical or mental disability; and
b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:
1. Assisted by another individual of choice in the application process; and
2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:
1. Deaf; or
2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 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, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

a. Income;

b. Technical eligibility; and

c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have an extended period to verify information not to exceed three (3) months in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4)[~~11(4)~~] of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility.

(1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and

2. U.S. citizen or qualified alien;

(b) Is under age:

1. Thirteen (13) at the time of application or recertification; or

2. Nineteen (19) at the time of application or recertification and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

a. Licensed child-care center;

b. Certified child-care home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 002:090, Child-care center licensure;

2. Certified according to 922 KAR 002:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 002:180, 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 002:180 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 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 8[~~7~~] of this administrative regulation;[~~or~~]

(e) 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; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for up to three (3) months or in accordance with Section 9[~~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 8(6)(d)[~~7(6)(d)~~] of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.

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 11[~~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.

Section 6. State-Funded Workforce Training[~~Kentucky Works~~] Child Care Eligibility Determination.[~~(1)~~] A child shall be eligible for CCAP if the child:

(1)[~~(a)~~] Resides with an applicant who is participating in the:

(a) Kentucky Works Program described in 921 KAR 2:370; or

(b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2)[~~(b)~~] Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination.

(1) Effective June 28, 2019, to the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a. A certified trade school or an accredited college or university;

b. A program that leads to a degree or certification; and

c. Accordance with subsection (2) of this section;

2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;

3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;

4. Meets income eligibility criteria of Section 8 of this administrative regulation; and

5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and

(b) Meets the requirements established in Section 3 of this administrative regulation.

(2) While an applicant is enrolled in a certified trade school or an accredited college or university:

(a) The applicant's coursework shall be completed in-person or online; and

(b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.

(3) An applicant who does not complete a term at a trade school, college, or university in good academic standing shall be responsible for the cost of child care tuition for the term.[~~(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.~~]

Section 8[~~7~~]. Income Eligibility.

(1) A child shall be eligible for 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) 200[~~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 is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of a:

1. Kentucky Works supportive services payment pursuant to 921 KAR 2:017; or

2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;

(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. 1261, 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. 1261, 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 U.S.C. 20102(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;

(kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 007:015 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 four and one-third (4 1/3);

b. Biweekly amount by 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.

(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 9[~~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 10[~~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 Chart, effective December 1, 2018.

(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 Type I;

4. Licensed Type II;

5. Certified;

6[~~5~~]. Registered;

7[~~6~~]. Infant/Toddler;

8[~~7~~]. Preschool child; and

9[~~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 002:180 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 11[~~10~~]. Family Copayment.

(1) Unless a family copayment has been waived in accordance with Section 5(3) 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
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 12[~~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 DCC-94, Child Care Service Agreement and Certificate.

(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) DCC-94; or

(b) DCC-90.

(4) Notification of action. (a) 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) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;

2. Approval of an application; or

3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;

2. Discontinuance of a CCAP benefit;

3. Reason for adverse action;

4. Citation from an applicable state administrative regulation; and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18[~~17~~] of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) 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) 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 002:020.

(7) 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) 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 14(1)(c)[~~13(1)(c)~~] of this administrative regulation.

Section 13[~~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 002:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 002:090, Child-care center licensure;

(c) 922 KAR 002:100, Certification of family child-care homes;

(d)[~~922 KAR 002:110, Child-care center provider requirements;~~

~~(e)~~] 922 KAR 002:120, Child-care center health and safety standards;

(e)[~~(f)~~] 922 KAR 002:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f)[~~(g)~~] 922 KAR 002:190, Civil penalties;

(g)[~~(h)~~] 922 KAR 002:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

(h)[~~(i)~~] 922 KAR 002:280, Background checks for child care staff members, reporting requirements, and appeals[~~, upon its adoption~~].

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 002:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) A child in the custody of the cabinet;

(e) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(f)[~~(e)~~] Teen parents attending high school or pursuing a general equivalency degree (GED);

(g)[~~(f)~~] A K-TAP recipient attempting to transition off assistance through employment;

(h)[~~(g)~~] A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(i)[~~(h)~~] A low income working parent; or

(j)[~~(i)~~] A parent in education or training programs leading to self-sufficiency.

Section 14[~~13~~]. Provider Requirements.

(1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 002:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 002:090, Child-care center licensure;

3. 922 KAR 002:100, Certification of family child-care homes;

4.[~~922 KAR 002:110, Child-care center provider requirements;~~

~~5.~~] 922 KAR 002:120, Child-care center health and safety standards;

5[~~6~~]. 922 KAR 002:180, Requirements for registered child care providers in the Child Care Assistance Program;

6[~~7~~]. 922 KAR 002:190, Civil penalties;

7[~~8~~]. 922 KAR 002:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

8[~~9~~]. 922 KAR 002:280, Background checks for child care staff members, reporting requirements, and appeals[~~, upon its adoption~~]; and

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any

absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4) (a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 002:100 or 922 KAR 002:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 002:090[~~, 922 KAR 002:110,~~] and 922 KAR 002:120; or

b. For a certified family child-care home, 922 KAR 002:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 002:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 15[~~14~~]. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8[~~7~~] of this administrative regulation may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

Section 16[~~15~~]. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 002:020.

Section 17[~~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 11[~~10~~] of this administrative regulation or 922 KAR 002:020;

(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 14(1)(c)[~~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 002:100 or 922 KAR 002:120, unless an operating plan is approved in accordance with Section 14(4)[~~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 13(8)[~~12(8)~~] of this administrative regulation.

Section 18[~~17~~]. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

(a) 922 KAR 002:260; or

(b) 922 KAR 002:020.

Section 19[~~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 20[~~19~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 12/18[~~10/17~~];

(b) "DCC-90P, CCAP Job Search Documentation", 10/17;

(c) "DCC-94, Child Care Service Agreement and Certificate", 10/17;

(d) "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(e) "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(f) "DCC-94C, Provider Notification Letter", 10/17;

(g) "DCC-94E, Child Care Daily Attendance Record", 7/13;

(h) "DCC-97, Provider Billing Form", 04/13;

(i) "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(j) "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 12/18[~~10/17~~].

(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.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 28, 2018

FILED WITH LRC: November 30, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, phone (502) 564-3703, email Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation improves child care provider participation in CCAP and parental access to safe and affordable child care by increasing child care provider rates to no less than the 40th percentile of current market rates. In addition, the amendment qualifies a child for CCAP if the parent participates in the Supplemental Nutrition Assistance Program Employment and Training Program, or if the parent is a full-time postsecondary education student without work requirement. The amendment allows a higher income threshold, 200 percent of the 2018 federal poverty level, at redetermination to allow for greater parental earnings prior to CCAP ineligibility. The amendment gives the state administrating agency ability to use CCDF to support child care for children in foster care, providing a necessary support to foster parents. Lastly, the amendment to this administrative regulation 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 obligate additional federal CCDF funds awarded to Kentucky in a timely manner and to offer programmatic improvements promoting child care provider participation in CCAP and parental access to safe and affordable child care. The amendment preserves the health, safety, and welfare of the vulnerable populations served by CCAP.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of CCAP in accordance with federal laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 29, 2018, there were 21,077 families and 38,533 children enrolled in CCAP, and over 2,300 providers participating in CCAP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new action required on the part of regulated entities; rather regulated entities will realize enhanced provider reimbursement rates, a higher federal poverty level used for CCAP eligibility redetermination, and ability to qualify for CCAP if an applicant is enrolled full-time in a certified trade school or accredited college or university. In addition, the state administrating agency will be able to access CCDF for foster children's child care needs.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from enhanced provider reimbursements, higher federal poverty level used for eligibility redeterminations, and opportunity to qualify for CCAP based upon full-time enrollment and good academic standing in a certified trade school or accredited college or university without work requirement.

(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 be implemented within available federal and state appropriations for CCAP. An additional federal award of discretionary CCDF funds has been received by the state, and similar award is anticipated in future years. In total, the projected impact of this amendment is approximately $42 million annually.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state general funds.

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Any local government or school district operating a child care program that receives CCAP will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. An additional federal award of discretionary CCDF funds has been received by the state, and like award is anticipated in future years. In total, the projected impact of this amendment is approximately $42 million annually.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. In total, the projected impact of this amendment is approximately $42 million annually.

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

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

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(New Administrative Regulation)

16 KAR 3:090. Certifications for advanced educational leaders.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. An educator preparation provider shall 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. This administrative regulation establishes the preparation and certification programs for all advanced educational leaders.

Section 1. Definitions.
(1) "Advanced Educational Leader" means school principal, school superintendent, director of special education, instructional supervisor, or director of pupil personnel.
(2) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the specific Advanced Educational Leader position.
(3) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the specific Advanced Educational Leader position.
(4) "Qualified applicant" means an applicant who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the applicant is unsuitable for appointment.

Section 2. Programs of Preparation for Advanced Educational Leaders.
(1) Prerequisites for admission for all programs of preparation for Advanced Educational Leadership certifications shall include:
(a) Qualifications for a Kentucky teaching certificate;
(b) Admission to the preparation program on the basis of criteria developed by the Educator Preparation Provider pursuant to 16 KAR 5:010;
(c) Rank II; and
(d) Completion of at least three (3) years of full-time, documented teaching experience 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.
(2) Preparation programs for Advanced Educational Leaders shall be consistent with the Professional Standards for Educational Leadership.

Section 3. Assessment Prerequisites for Advanced Educational Leaders.
(1) An applicant for certification for advanced educational leadership, or a career and technical school principal, shall attain the specified minimum score on the School Leadership Licensure Assessment.
(2) The Education Professional Standards Board shall determine the specified minimum score for the School Leadership Licensure Assessment.
(3) The Education Professional Standards Board shall specify the passing score for Advanced Educational Leaders on the School Leadership Licensure Assessment. The order shall be posted to the website for the Education Professional Standards Board.
(4) An applicant for certification for advanced educational leadership, or a career and technical school principal, shall only be required to pass the School Leadership and Licensure Assessment once. The applicant shall not be required to pass the assessment if they pursue additional certification for advanced educational leadership or career and technical school principal.

Section 4. Level I and Level II Certification.
(1) The initial professional certificate for all Advanced Educational Leaders, with the exception of School Superintendent, shall be Level I certification.
(2) Application for the professional certificate for the specific Advanced Educational Leader certification shall be made on a Form CA-1.
(3) The initial professional certification for the specific Advanced Educational Leader shall be:
(a) Issued for a duration of five (5) years upon the successful completion of a Level I program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010; and
(b) Renewed subsequently for five (5) year periods.
1. The first renewal shall require the completion of a Level II program approved by the Education Professional Standards Board pursuant to 16 KAR 5:010.
2. Each five (5) year renewal thereafter shall require the completion of:
a. Two (2) years of experience in the corresponding Advanced Educational Leader position;
b. Three (3) semester hours of additional graduate credit or the equivalent related to the corresponding Advanced Educational Leader position; or
c. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.
(4) If a lapse in certification occurs for lack of completion of the Level II preparation, the certification may be reissued for a five (5) year period upon successful completion of the Level II preparation.
(5) If a lapse in Level II certification occurs for lack of completion of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.
(6) Graduate level credit earned in the Level I and Level II preparation programs may be eligible for consideration of Rank I classification pursuant to 16 KAR 8:010, "Plan I" or "Plan II".

Section 5. School Superintendent.
(1) In addition to the requirements of Section 2, prerequisites for admission to the program of preparation for Advanced Educational Leadership-School Superintendent shall include:
(a) Except as provided in paragraph (b) of this subsection completion of the Levels I and II preparation and certification for the position of school principal, or supervisor of instruction; or
(b) For a candidate who completed preparation for principal prior to 1988, completion of the assessments for administration.
(2) Each accredited educator preparation provider shall have a formal application procedure for admission to a superintendent preparation program, which shall include the following:
(a) A written letter of recommendation from a supervisor or an education agency representative attesting to the applicant's suitability for school leader;
(b) An admissions portfolio which documents that the applicant demonstrates the following:
1. The ability to improve student achievement;
2. Knowledge of school laws related to school finance, school operations, and personnel matters;
3. The ability to implement curriculum, instruction, and assessment;
4. A commitment to ongoing professional growth;
5. Effective communication skills; and
6. The ability to build relationships, foster teamwork, and develop networks; and
(c) Proof the applicant has completed a master's degree program.
(3) Each superintendent preparation program shall utilize a

clinical model which requires candidates to:

(a) Work in diverse school and district central office settings; and

(b) Solve problems based on the school district's needs;

(c) Develop a mentoring plan for each candidate; and

(d) Design a method to assess the effectiveness of a candidate's clinical experience.

(4) A superintendent preparation program shall require all candidates to complete a capstone project to be presented to a panel of program faculty and practicing school administrators prior to completion of the program.

(5) The professional certificate for Advanced Educational Leader- School Superintendent shall be issued to an applicant who has completed:

(a) An approved program of preparation, as required by Section 2, and pursuant to 16 KAR 5:010;

(b) The assessment requirements in Section 3; and

(c) At least two (2) years of experience in a position of school principal, supervisor of instruction, guidance counselor, director of pupil personnel, director of special education, school business administrator, local district coordinator of vocational education, or a coordinator, administrator, or supervisor of district-wide services. Other administrative experience may be substituted for this requirement with the approval of the Education Professional Standards Board.

(6) Application for the professional certificate for Advanced Educational Leader - School Superintendent shall be made on a Form CA-1.

(7) The professional certificate for Advanced Educational Leader- School Superintendent shall be valid for the position of school superintendent or assistant superintendent.

Section 6. Supervisor of Instruction. The professional certificate for Advanced Educational Leader- Supervisor of Instruction shall be issued in accordance with Section 4, to an applicant who has completed the approved program of preparation, which corresponds to the certificate at an educator preparation provider approved under the standards and procedures established in 16 KAR 5:010 and Section 2, and obtained at least the minimum passing score on the School Leadership Licensure Assessment.

Section 7. Director of Pupil Personnel.

(1) The professional certificate for Advanced Educational Leader- Director of Pupil Personnel Services shall be issued in accordance with Section 4, to an applicant who has completed the approved program of preparation which corresponds to the certificate at an educator preparation provider approved under the standards and procedures established in 16 KAR 5:010 and Section 2, and obtained at least the minimum passing score on the School Leadership Licensure Assessment.

(2) If a qualified applicant for director of pupil personnel services is not available as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary certificate for a director of pupil personnel services who has:

(a) A valid Kentucky classroom teaching certificate;

(b) A Rank II;

(c) Three (3) years of successful teaching experience; and

(d) Been admitted to the preparation program for the professional certificate for Advanced Educational Leader- Director of Pupil Personnel Services.

(3) Application for the one (1) year probationary certificate for a director of pupil personnel services shall be made on Form CA-40.

(4) Each annual renewal of the probationary certificate for director of pupil personnel services shall require completion of an additional nine (9) semester hours selected from the approved program.

Section 8. Director of Special Education.

(1) The professional certificate for Advanced Educational Leader- Director of Special Education shall be issued in accordance with Section 4, to an applicant who has completed the approved program of preparation which corresponds to the certificate at an educator preparation provider approved under the standards and procedures established in 16 KAR 5:010 and Section 2, and obtained at least the minimum passing score on the School Leadership Licensure Assessment.

(2) The candidate may have three (3) years of full-time experience as a school psychologist, but shall have a minimum of one (1) year as a teacher of exceptional children or school psychologist to meet the requirements of Section 2(1)(a).

(3) The candidate may qualify for a Kentucky school psychologist certificate in lieu of the requirements of Section 2(1)(a).

(4) Each person whose job description includes supervising, directing, administering, or coordinating special education programs, at the district-wide level shall be required to hold:

(a) Endorsement for director of special education;

(b) Professional certificate for director of special education;

(c) Endorsement for supervisor of special education;

(d) Endorsement for teacher consultant for special education;

(e) Certificate valid for supervisor of instruction for persons serving in that position on July 14, 1992, as provided by KRS 157.250; or

(f) Valid certificate possessing the code ADSE for approval of director of special education.

(5) If a qualified applicant is not available for the position of director of special education, the superintendent on behalf of the local board of education may request a professional certificate for director of special education for a two (2) year period for an applicant who has:

(a) A valid Kentucky certificate for teachers of exceptional children;

(b) A Rank II;

(c) Three (3) years of full-time experience teaching exceptional children;

(d) Completed a course in special and regular education case law; and

(e) Been admitted to the preparation program for the professional certificate for director of special education.

(6) Application for the two (2) year certificate for a director of special education shall be made on Form CA-28.

(7) The applicant shall complete the total curriculum for the professional certificate for director of special education by September 1 of the year of expiration.

Section 9. Principal.

(1) In addition to the requirements of Section 2, prerequisites for admission to the program of preparation for Advanced Educational Leadership-School Principal shall include:

(a) A written statement documenting the candidate's skills and understanding in the following areas:

1. Ability to improve student achievement;

2. Leadership; and

3. Advanced knowledge of curriculum, instruction, and assessment; and

(b) An agreement from a school district pledging support that includes opportunities for the candidate to participate in a clinical experience. The agreement shall include:

1. A description of how the district will provide opportunities for the candidate:

a. To observe school and district leadership; and

b. To participate in school and district leadership activities;

2. Confirmation that the candidate shall be permitted to utilize aggregated school and district information and data; and

3. The signature of the district superintendent or the district superintendent's designee.

(2) Candidates who have not obtained their Rank II may be admitted to the program of preparation for Advanced Educational Leadership-School Principal if the educator preparation provider determines that the candidate has met all other requirements for admission.

(3) In addition to the requirements established in 16 KAR 5:010, Section 22, the educator preparation provider shall prepare and submit to the Education Professional Standards Board for

each principal preparation program for which the provider is seeking approval program review documents which meet the submission requirements and include the following documented information:

(a) Signed collaborative agreements with school districts that include the following:

1. Joint screening of principal candidates by both district and university;

2. Joint identification of potential program leaders and mentors;

3. District and university co-design and co-delivery of courses; and

4. The manner in which the principal preparation program is based on the identified leadership needs of each district;

(b) The protocol for screening applicants that ensures the identification and admission of candidates into the program;

(c) A matrix that illustrates the alignment between the standards identified in Section 2, and the program's curriculum and clinical experiences;

(d) A syllabus for each of the program's required courses identified in the documentation required by paragraph (c) of this subsection;

(e) The program's plan to collaborate with each district in providing clinical experiences that:

1. Enhance courses throughout the entire program;

2. Ensure that the candidate has a continuum of school-based experiences that range from observing, to participating, to leading; and

3. Expose the candidate to diverse student populations and school environments;

(f) The program's plan to use rigorous formative and summative evaluations of each candidate's:

1. Knowledge and skills to advocate, nurture, and sustain a school culture that promotes and supports high levels of learning for all students; and

2. Knowledge and skills to manage a school for efficiency, accountability, and safety; and

(g) The program's plan to require all candidates to conduct a capstone project and defend it to a panel of program faculty and practicing school administrators at the end of Level I preparation.

(4) A statement of eligibility for internship for the provisional certificate for Advanced Educational Leader- School Principal shall be issued for a five (5) year period to an applicant who:

(a) Has successfully completed an approved program of preparation;

(b) Has three (3) years of full-time teaching experience; and

(c) Has successfully completed the appropriate assessment requirements in Section 3, or qualifies for a one (1) year period for completion of assessments under KRS 161.027(6).

(5) Application for a Statement of Eligibility shall be made on Form CA-1.

(6) A request for renewal of the Statement of Eligibility pursuant to KRS 161.027(7) shall be made on Form CA-2, incorporated by reference in 16 KAR 4:060.

(7) The professional certificate for Advanced Educational Leader- School Principal shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 16 KAR 7:020.

(8) The provisional or professional certificate for Advanced Educational Leader-School Principal shall be valid for the position of school principal or school assistant principal for all grade levels.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Professional Standards for Educational Leaders;

(b) Form CA-1, 10/18, Education Professional Standards Board;

(c) Form CA-2, 10/18, Education Professional Standards Board;

(d) Form CA-28, 08/15, Education Professional Standards Board; and

(e) Form CA-40, 08/15, Education Professional Standards Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 24, 2019, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna L. Durrett, 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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna L. Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the certifications for Advanced Educational Leaders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that there are certified individuals to fill the Advanced Educational Leader positions in Kentucky Schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rests the responsibility of selecting assessments and determining acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for certifications for Advanced Educational Leaders.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 173 Kentucky school districts, all applicants seeking certification, and students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Applicants will have to submit to the Education Professional Standards Board the appropriate application form and meet the requirements for issuance of the certificate. School districts and students will not have to take any actions to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no expected cost for students or school districts. Applicants will have to meet the costs associated with the approved programs of preparation and the School Leadership Licensure Assessment. These costs are not set by the Education Professional Standards Board. Applicants will also have to pay the application fees established in 16 KAR 4:040. However, no costs or fees are established by this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Advanced Educational Leaders will have a clear pathway to certification; the requirements for each type of certification will be located in the same regulation. School districts and students will have access to certified Advanced Educational Leaders who have been prepared in accordance with national standards for school leaders.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General 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: At this time, no increase in fees or funding expected to be needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation. All candidates for certification for Advanced Educational Leaders shall meet these requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and the 173 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, 161.027, 161.028 and KRS 161.030.

(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 should be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the administration of this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the qualifications and procedures for obtaining certification.

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(New Administrative Regulation)

302 KAR 50:090. Enforcement, corrective action plans and mandatory reporting to state and federal agencies, department to retain growing site information for at least three (3) years.

RELATES TO: KRS 260.850-260.869

STATUTORY AUTHORITY: KRS 260.862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations 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 defines certain departmental enforcement duties with respect to individuals who are found to have violated the statutes and administrative regulations governing that person's participation in the department's hemp program.

Section 1. Definitions.

(1) "Department" or "KDA" is defined by KRS 260.850(3).

(2) "GPS" means Global Positioning System.

(3) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(4) "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 include a field name or building name.

(5) "Person" means an individual or business entity.

(6) "Program" means the department's Industrial Hemp Program.

Section 2. Department to Collect and Retain Information About Growing Locations. The department shall collect, and retain for a period of at least three (3) calendar years, Location ID information for every site or location where the department has approved hemp to be grown.

Section 3. Ineligibility of Persons Found to have Negligently Violated Rules Three Times in a Five (5) Year Period. A person who is found by the department to have negligently violated any statute or administrative regulation governing that person's participation in the hemp program three (3) times in a five (5) year period shall be ineligible to hold a license for a period of five (5) years beginning on the date of the third violation.

Section 4. Corrective Action Plans for Negligent Violations.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures set forth in 302 KAR 50:020 and 302 50:030, a person who is found by the department to have negligently violated any statute or administrative regulation governing that person's participation in the hemp program shall be subject to a corrective action plan at the discretion of the department.

(2) The department may impose a corrective action plan for a negligent violation of any statute or administrative regulation governing a person's participation in the hemp program, including without limitation:

(a) Failing to disclose, or provide required information about, a site where hemp is being grown, processed, or stored;

(b) Failing to obtain a necessary license from the department or a necessary authorization from a state or federal agency; and

(c) Producing hemp or other cannabis with a delta-9 THC concentration of more than 0.3 percent on a dry weight basis.

(3) Corrective action plans issued by the department shall

include, at a minimum, the following information:

(a) A reasonable date by which the person shall correct his or her violation; and

(b) A requirement for periodic reports from the person to the department about the person's compliance with the corrective action plan, statutes, and administrative regulations for a period of at least three (3) years from the date of the corrective action plan.

Section 5. Mandatory Reports to State and Federal Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures set forth in 302 KAR 50:020 and 302 KAR 50:030, a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements set forth in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the following law enforcement agencies:

(a) The Attorney General of the United States;

(b) The Commissioner of the Kentucky State Police; and

(c) The Commander of the Kentucky State Police's Cannabis Suppression Branch.

Section 6. Department to Submit Growing Locations and Grower Licensee Information to United States Secretary of Agriculture.

(1) Not more than thirty (30) days after receiving and compiling the following information, the department shall provide it to the United States Secretary of Agriculture or the Secretary's designee:

(a) The licensed grower's name;

(b) The licensed grower's telephone number, email address, residential address, mailing address, or another form of contact information;

(c) The Location ID for each field, facility, or other place where hemp is licensed to be grown; and

(d) An indication whether the person's license is currently in good standing.

(2) The department shall provide real-time updates to the information that the department previously submitted pursuant to Section (1) of this administrative regulation.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 13, 2018

FILED WITH LRC: December 13, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22nd, 2019, 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 January 31, 2019. 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies requirements for participation in the KDA hemp program.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA had 282 licensed participants in the program for the 2018 growing season. The best estimate of the KDA is that participation will likely at least double in 2019. The KDA will be effected as well.

(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: Changes to federal statutes will require the additional notice provisions. The KDA wishes to incorporate these additions to be compliant with all anticipated farm bill language.

(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 add no cost to the entities listed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, and handle industrial hemp.

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

(a) Initially: The administrative regulation itself adds very little if any cost to the KDA. It only requires marginally a few extra steps when required.

(b) On a continuing basis: The KDA anticipates that this regulation will not add any measurable cost to the program long term.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer come from the fees created by the other hemp administrative regulation, as well as the KDA general 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: This administrative regulation creates no fees, nor requires any increase in fees.

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940.
2. State compliance standards. KRS 260.850-260.869
3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940. establish requirements for state hemp programs. This administrative regulation establishes the requirements for participation in Kentucky.
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? The Kentucky Department of Agriculture is impacted for the administration of the hemp program.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850 - 260.869 and 7 U.S.C. § 5940.
(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 KDA cannot estimate the costs of other agencies, but does not reasonably guess that marginal costs will increase.
(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 filing does not create 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 filing does not create revenue.
(c) How much will it cost to administer this program for the first year? The entire hemp program cost approximately $497,000 for 2018.
(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses. We reasonably anticipate doubling of acres planted for the 2019 growing season.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): This filing does not create revenue.
Expenditures (+/-): This filing has no measurable cost.
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 1:190. Department of Juvenile Justice Policy and Procedures: Interstate Compact for Juveniles.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645
STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 635.500, 640.120, 645.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Interstate Compact of Juveniles", November 30, 2018 is incorporated by reference and includes the following:
1200 Definitions (Added 11/30/18);
1201 Interstate Referrals (Added 11/30/18);
1202 Interstate Runaways, Escapees, and Absconders (Added 11/30/18);
1203 Interstate Travel (Added 11/30/18);
1204 Interstate Revocations and Case Closure (Added 11/30/18);
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner
APPROVED BY AGENCY: November 29, 2018
FILED WITH LRC: November 30, 2018 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time, at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. The hearing is open to the public. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the classification and placement of juveniles being considered for out-of-state placement.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.0652 and 15A.069 and comply with the provisions of the Interstate Compact for Juveniles.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the management, policy and coordination of all matters relating to the classification and placement of juveniles being considered for out-of-sate-placement and the legally authorized transfer of supervision and care, as well as the return of juveniles from one state to another.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
By providing clear and concise direction and information to the

Department of Juvenile Justice employees and the residential and community population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,400 employees of the Department in community and residential settings, approximately 2,000 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice facilities.

(4) Provide analysis of how the entities identified in question (3) will be impacted by 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: DJJ classification and community and residential programs will need to update their Standard Operating Procedures to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To ensure a clearer understanding of the policies and procedures by staff and youth, thereby impacting the security and safety of the agency and the public.

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

(a) Initially: No additional cost projected.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted Funds if necessary. Department of Juvenile Justice General Fund and Restricted Funds if necessary. No additional funding is required, however any associated training or staff allocations will come from the Department of Juvenile Justice General 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties,
fire departments, or school districts) will be impacted by this administrative regulation? Response: Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), 15A.0652, 15A.0654, 15A.067, 600.040, 605.090, 605.095, 605.100, 605.110(3), 605.150, 635.060, 635.095, 635.100, 635.520, 640.120, 645.250

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Response: None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Response: None

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

(d) How much will it cost administer this program for subsequent years? Response: No additional cost is projected.

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:

LABOR CABINET
Department of Workers' Claims
(New Administrative Regulation)

803 KAR 025:290 Continuation of Medical Benefits.

RELATES TO: KRS 342.0011(13), 342.020.

STATUTORY AUTHORITY: KRS 342.020, 342.260, 342.265, 342.270, 342.275.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department and the work of administrative law judges so long as those administrative regulations are consistent with KRS Chapter 342 or KRS Chapter 13A. KRS 342.020(1) provides an employer shall pay for the cure and relief from the effects of an injury or occupational disease as required at the time of injury and thereafter for the length of time set forth in KRS 342.020. KRS 342.020(3) sets forth the length of time for which the employer is responsible for payment and provides an employee shall receive a continuation of the benefits provided in KRS 342.020 beyond the stated length of time if certain criteria are met. KRS 342.020(3) further provides the department shall, 754 weeks from the date of injury or last exposure, notify the employee of the right to file an application for continuation of the benefits provided in KRS 342.020. This administrative regulation applies to the benefits provided in KRS 342.020 and for which the employer's responsibility for payment is limited to 780 weeks. This administrative regulation establishes the process by which the department will notify the employee of the right to file an application to continue the benefits provided by KRS 342.020, the method by which the employee is to make application, and the process by which an administrative law judge will determine and order a continuation of benefits for an additional time beyond the original period.

Section 1. Definitions.

(1) "Benefit Review Conference" means a benefit review conference as described in 803 KAR 025:010, Section 13.

(2) "Commissioner" means the commissioner charged in KRS 342.228 to administer the department and whose duties are stated in KRS 342.230.

(3) "Department" means the governmental entity whose responsibilities are provided in KRS 342.228.

(4) "Notice" means a communication from the commissioner or his designee advising a claimant of the right to file an application to

extend the employer's liability for payment of benefits beyond the 780-week limitation provided in KRS 342.020(3).

(5) "Notice of Filing of Application" means a document that alerts the parties to a claim that an application to extend the employer's obligation for payment of benefits beyond the 780-week period has been filed, assigns the matter to an administrative law judge, and provides a Litigation Management System access number to those parties.

(6) "Week" means seven (7) consecutive days; the day of injury or date of last exposure shall not be included when computing the 780-week period for which the employer has the obligation to pay the benefits specified in KRS 342.020.

Section 2. Notice; Duty to Inform the Department of Workers' Claims of Change of Address.

(1) 754 weeks from the date of injury or last exposure, the commissioner shall advise the claimant in writing of the right to file an application for the continuation of medical benefits. Notice shall be mailed by first class mail to the claimant's last known address as reflected in the department's Litigation Management System. Notice shall also be sent electronically to the last email address provided by the claimant to the department. The day of injury or date of last exposure shall not be included when computing the 754-week period; when the last day of the 754-week period falls on a Saturday, Sunday, or state holiday, the notice shall be generated the next day which is not a Saturday, Sunday, or state holiday.

(2) Subsequent to the entry of an award or approval of a settlement agreement in which medical benefits are either awarded or not waived, the claimant shall notify the department in writing in a format prescribed by the commissioner of any change in physical mailing address and email address within thirty (30) days of such change of address.

(3) Subsequent to the entry of an award or approval of a settlement agreement in which medical benefits are either awarded or not waived, the employer and medical payment obligor shall notify the department in writing in a format prescribed by the commissioner of any change in the claimant's physical mailing address or email address of which it, or its agents, become aware. Such notice shall be given within thirty (30) days of the date the employer, medical payment obligor or any agent thereof becomes aware of a change in the claimant's address.

Section 3. Procedure for Filing and Resolution of Applications for Continuation of Medical Benefits.

(1) The claimant shall file an application for continuation of medical benefits on the form prescribed by the commissioner no sooner than seventy-five (75) days prior to the last day of the 780-week period from the date of injury or last exposure and no later than the last day of the 780-week period from the date of injury or last exposure.

(2) (a) With the application for continuation of medical benefits the claimant shall file a medical report on the form prescribed by the commissioner. The medical report shall include:

1. A description of the injury or occupational disease for which medical benefits were awarded or approved and for which an application for continuation of medical benefits is being filed;

2. A medical opinion that asserts continued medical treatment is reasonably necessary, related to the work injury or occupational disease, and explains the basis for that opinion; and

3. A general description of the medical treatment that may reasonably be expected.

(b) With the application for continuation of medical benefits and the medical report the claimant shall file a newly executed Form 106.

(3) A medical provider shall be entitled to charge a fee not to exceed $100 for preparing the report described in subsection (2). The fee shall be paid by the claimant.

(4) Filing an application for continuation of medical benefits shall stay termination of the employer's obligation to pay the benefits pursuant to KRS 342.020(3)(a) pending resolution of the application.

(5) Following the filing of an application for continuation of medical benefits, the commissioner shall issue a Notice of Filing of Application that shall:

(a) Be mailed to the claimant and employer, and, when applicable, one (1) of the following payment obligors: the employer's insurance carrier, self-insured group, uninsured employers fund, guaranty fund, or other payment obligor;

(b) Provide the parties a Litigation Management System access code; and

(c) Assign the matter to an administrative law judge.

(6)(a) Within sixty (60) days of the date of the Notice of Filing Application, the defendant shall file a Notice of denial or acceptance of the application.

(b) If the defendant accepts the application for continuation of medical benefits, the administrative law judge shall issue an order granting the extension of medical benefits beyond 780 weeks from the date of injury or last exposure. Acceptance of the application for continuation of medical benefits shall not be deemed an admission of compensability as to any specific medical treatment beyond 780 weeks from the date of injury or last exposure. The defendant retains the right to file a motion to reopen pursuant to 803 KAR 025:010, Section 6(5), and 803 KAR 025:012, Section 1(6) in order to assert a medical dispute to challenge compensability of specific medical treatment;

(c) If the defendant denies the application for continuation of medical benefits, it may file a medical report with the denial. The medical report shall include the following:

1. A description of the injury that is the basis of the claim; and

2. A medical opinion asserting continued medical treatment is not reasonably necessary, not related to the work injury or occupational disease, and explaining the basis for that opinion.

(d) At the conclusion of the sixty (60) day period provided in paragraph (a) of this subsection in which the defendant is to file its denial or acceptance of the application, the claimant shall have fifteen (15) days in which to file additional medical evidence in rebuttal to the evidence filed by the defendant;

(e) If the defendant fails to timely file its denial of the application, the administrative law judge shall issue an order granting the extension of medical benefits beyond 780 weeks from the date of injury or last exposure.

(7) (a) If the defendant files a denial of the application, the administrative law judge shall schedule a telephonic Benefit Review Conference to be held within twenty (20) days of the conclusion of the claimant's rebuttal period provided in subsection (6)(d) of this section.

(b) The telephonic Benefit Review Conference shall be an informal proceeding.

(c) A transcript of the telephonic Benefit Review Conference shall not be made.

(d) All parties and representatives participating in the telephonic Benefit Review Conference shall have authority to immediately resolve disputed issues and enter into a binding settlement agreement with respect to the application.

(e) If at the conclusion of the Benefit Review Conference the parties have not reached an agreement on all issues, the administrative law judge shall:

1. Prepare a final Benefit Review Conference memorandum and order, which identifies all contested issues; and

2. Schedule a formal hearing unless the formal hearing is waived by the parties.

(8) The claimant shall have the burden of proof to demonstrate continued medical treatment is reasonably necessary and related to the work injury or occupational disease.

(9) Within sixty (60) days following conclusion of the formal hearing or order waiving the formal hearing, the administrative law judge shall issue an award, order or decision, which shall include a statement of findings of fact and conclusions of law.

(10) An order granting a continuation of benefits beyond 780 weeks shall not include an award of any specific medical treatment identified in the medical report submitted in support of the application.

(11) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of the decision, order or award of the administrative law judge in accordance with the procedures set out in 803 KAR 025:010, Section 20.

(12) Pursuant to KRS 342.285(1), the decision of the administrative law judge shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in 803 KAR 025:010, Section 22.

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

(a) "Application for Continuation of Medical Benefits, Form CMB-APP-1", 8/18;

(b) "Medical Report in Support of Continuation of Medical Benefits, Form CMB-APP-2", 8/18;

(c) "Change of Address, Form CMB-ADD-3", 8/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: November 28, 2018

FILED WITH LRC: November 28, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2019, at 1:00 p.m. (EDT) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. 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: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email dale.hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the process by which a claimant will be notified of the right to apply for continuation of benefits beyond a 780-week period and the steps required to make that application.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.020, the commissioner is required to notify a claimant of his right to apply for continuation of benefits beyond a 780-week period and the steps required to make that application.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.020 requires the commissioner to notify a claimant of his right to apply for continuation of benefits beyond a 780-week period and the steps required to make that application; this administrative regulation provides that process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 342.020 provides an employer is responsible for payment of the benefits provided in that statute for a period of 780 weeks; however, an injured employee may apply to extend the employer's period of payment responsibility beyond that period. Upon demonstrating that treatment beyond the 780-week period is reasonably necessary and related to the work injury, the employee is entitled to payment of benefits beyond the 780-week period. This administrative regulation provides guidance to the employee and employer with respect to that 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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured employees, physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, and third party administrators.

(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: Employees desiring to extend the employer's responsibility for payment beyond 780 weeks from the date of injury or last exposure will have to properly apply to extend those benefits; employers will have to either accept or challenge the extension of their period of payment responsibility. The other parties will not have to take affirmative steps to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of completing the medical report cannot exceed $100. The cost to the payment obligors cannot be ascertained until treatment is sought and provided to the injured employee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers will be able to identify those claims for which they no longer have a payment obligation and those claims for which they retain payment responsibility after 780 weeks. Injured employees will be able to receive benefits for work related injuries for longer than 780 weeks if it appears additional benefits are reasonably necessary.

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

(a) Initially: None

(b) On a continuing basis: The cost associated with this administrative regulation is the cost of printing and mailing a written notice to each injured employee who was awarded the benefits provided in KRS 342.020, or who entered into an approved agreement which included those benefits, on or after July 14, 2018. This cost will first be incurred 754 weeks after July 14, 2018.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied; the regulation applies to all parties 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 Department of Workers' Claims and all parts of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.260, 342.265, 342.270, 342.275.

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. As an employer, there may be some increased costs for medical services. It is impossible to estimate without knowing the specific medical services that will be required by injured employees after 780 weeks of benefits.

(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? The cost associated with this administrative regulation is the cost of printing and mailing a written notice to each injured employee who was awarded the benefits provided in KRS 342.020 or who entered into an approved agreement which included those benefits on or after July 14, 2018. It is not possible to estimate the cost associated with administering this regulation for the first year until July 14, 2019.

(d) How much will it cost to administer this program for subsequent years? It is not possible to estimate the costs at this time because the first of those costs will not be incurred until 754 weeks after July 14, 2018.

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: The cost associated with this administrative regulation is the cost of printing and mailing a written notice to each injured employee who was awarded the benefits provided in KRS 342.020 or who entered into an approved agreement which included those benefits on or after July 14, 2018. The first of those written notices will not be generated until 754 weeks after July 14, 2018.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Repealer)

804 KAR 2:016. Repeal of 804 KAR 2:015.

RELATES TO: KRS 244.130

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. This administrative regulation repeals 804 KAR 2:015 because the necessary substantive provisions of that administrative regulation are more efficiently relocated into 804 KAR 001:030, consolidating all administrative regulations relating to advertising of alcoholic beverages.

Section 1. 804 KAR 2:015, Prohibited statements, is hereby repealed:

CHRISTINE TROUT VAN TATENHOVE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 13, 2018

FILED WITH LRC: December 13, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2019 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email lee.walters@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Lee Walters

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 804 KAR 2:016.

(b) The necessity of this administrative regulation: The Board is filing a concurrent proposed amendment to 804 KAR 001:030 that incorporates necessary substantive provisions previously contained in 804 KAR 2:015. The administrative regulation amendment and this repealer will combine and provide uniformity of requirements for advertising across alcoholic beverages.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the supervision and control of the use and sale of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will allow all department licensees and interested consumers to more easily find all requirements for advertising alcoholic beverages in one regulation. Consolidation will provide needed uniformity of requirements and consistent treatment for advertising regarding all alcoholic beverage types.

(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 repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all holders of the 16,000 plus state licenses issued 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: Licensees will not be required to take any additional actions as result of the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified

in question (3): There is no cost to the regulated entities from repealing this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will find all requirements for advertising alcoholic beverages in one administrative regulation, facilitating compliance. Licensees will also be benefited by uniformity of requirements for all advertising regarding all alcoholic beverage types.

(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 implantation 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: No source of funding is needed to implement and enforce the repeal of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this 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? The Department of Alcoholic Beverage Control 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 241.060(1) authorizes the board to promulgate administrative regulations related to alcoholic beverages.

(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 not generate 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? This repealer will not generate revenue for state or local government in subsequent years.

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

(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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Repealer)

808 KAR 1:161. Repeal of 808 KAR 1:020; 1:050; 1:090; 1:120; 1:130; 1:150; 1:160.

RELATES TO: KRS 286.3-010, 286.3-020, 286.3-050, 286.3-095, 286.3-102, 286.3-135, 286.3-140, 286.3-145, 286.3-146, 286.3-170, 286.3-172, 286.3-174, 286.3-180, 286.3-185, 286.3-280, 286.3-290, 286.3-300, 286.3-375, 286.3-450, 286.3-480, 286.3-530, 286.3-690, 286.3-820, 286.3-920

STATUTORY AUTHORITY: KRS 286.1-020(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. This administrative regulation repeals seven (7) administrative regulations that are either outdated or whose necessary substantive provisions are more efficiently addressed elsewhere in the department's regulatory scheme. 808 KAR 1:020 and 1:120 are being repealed and their subject matter addressed by a new concurrently promulgated administrative regulation for exceptions to bank lending and reserve limits at 808 KAR 15:010. 808 KAR 1:050 is being repealed and its subject matter addressed by new concurrently promulgated administrative regulations in 808 KAR Chapter 14 addressing record retention for all department licensees. 808 KAR 1:090 is being repealed because it is unnecessary under the Kentucky Rules of Civil Procedure. 808 KAR 1:130 and 1:150 are being repealed and their subject matter addressed by a new concurrently promulgated administrative regulation for bank branch and loan production offices at 808 KAR 15:030. 808 KAR 1:160 is being repealed with necessary provisions preserved by amending 808 KAR 1:140 to bring all department fees into a single administrative regulation for ease of use.

Section 1. The following administrative regulations are hereby repealed:

(1) 808 KAR 1:020, Excess funds transactions;

(2) 808 KAR 1:050, Retention of records;

(3) 808 KAR 1:090, Stay of notice of intention to remove from office;

(4) 808 KAR 1:120, Loans secured by government obligations;

(5) 808 KAR 1:130, Loan production offices;

(6) 808 KAR 1:150, Establishment and relocation of bank branches or offices and establishment of loan production offices; and

(7) 808 KAR 1:160, Fees for services rendered to banks and trust companies.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 1:020, 1:050, 1:090, 1:120, 1:130, 1:150, and 1:160, which are either unnecessary or whose necessary substantive provisions are more efficiently relocated within the department's regulatory scheme.

(b) The necessity of this administrative regulation: This administrative regulation repealer is necessary to more logically and efficiently organize the regulatory framework applicable to state-chartered banks supervised by the Department of Financial Institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as required to interpret and carry out the provisions and intent of this chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will allow state-chartered banks to utilize a better-organized, more streamlined regulatory framework.

(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 administrative 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 repealer will affect the 121 banks chartered 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: This administrative regulation is a repealer that will facilitate compliance for state-chartered banks subject to the department's regulatory jurisdiction.

(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 is a repealer that will not require compliance from any regulated entity.

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

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is a repealer that will facilitate compliance with the department's regulatory scheme for all regulated entities.

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

(a) Initially: There will be no initial cost to implement this regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: No funding will be required for the implementation and enforcement 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: No increase in fees or funding will be 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this repealer will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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 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? There will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(New Administrative Regulation)

808 KAR 1:170. Licensing and registration.

RELATES TO: KRS 286.4, 286.8-010, 286.8-020, 286.8-030(1), 286.8-036, 286.8-060, 286.8-070, 286.8-080, 286.8-090(1), 286.8-260, 286.8-290, 286.9-010, 286.9-020, 286.9-030, 286.9-040, 286.9-050, 286.9-060, 286.9-071, 286.9-073, 286.9-080.

STATUTORY AUTHORITY: KRS 286.4-420, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4480, 286.4-610(1), 286.8-032, 286.8-034, 286.8-100, 286.8-140(1), 286.8140(4), 286.8-255, 286.8-285, 286.9-050, 286.9-060, 286.9-070, 286.9-090(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. This administrative regulation establishes the procedures and forms for submitting an application for licensure as a consumer loan company. KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the

basic purposes of KRS Chapter 286.8. This administrative regulation establishes procedures for licensure, registration, and electronic submission of filings and fees with the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC. KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form of and the filing procedures for an application for a license under KRS Chapter 286.9 and the information and documents that must be submitted to the commissioner with an application for a license. This administrative regulation establishes the required forms, information, documents, and filing procedures for licensees and applicants proceeding pursuant to these statutes.

Section 1. Definitions.

(1) "Audited financial statement" shall mean a financial statement prepared by a certified public accountant in accordance with generally accepted accounting principles. A financial statement shall include a balance sheet, income statement, statement of cash flows, and all relevant notes.

(2) "Surety bond" shall mean a bond furnished by a surety company authorized to conduct business in Kentucky.

Section 2. Licensure as a Consumer Loan Company. A person applying for licensure as a consumer loan company shall complete and submit:

(1) Form CL-1, Application for a Consumer Loan License with all required attachments;

(2) A Form CL-4, State License Confirmation Form completed by each state or jurisdiction in which the person is licensed or registered if the person applying for licensure as a consumer loan company is licensed or registered in any other state or jurisdiction to operate a business making loans of $15,000 or less at the time of application;

(3) The non-refundable application investigation fee established in KRS 286.4-440(1); and

(4) The annual license fee established in KRS 286.4-440(1).

Section 3. Licensure as a Limited Check Casher.

(1) Initial Application. A person applying for an initial limited check casher license shall complete and submit:

(a) Form LCC-1, Application for Limited Check Casher License with all required attachments;

(b) The nonrefundable investigation fee established in KRS 286.9-060(1);

(c) Form COMB-1, State License Confirmation Form for Check Casher License or Limited Check Casher License if the applicant has a license, registration, or claim of exemption related to the financial services industry in any other state;

(d) An audited financial statement dated as of the previous year end. If the applicant is a start-up company, an initial statement of condition and a pro-forma income statement shall be submitted instead of the income statement and statement of cash flows;

(e) Evidence that the applicant has complied or will comply with all workers' compensation and unemployment compensation laws of Kentucky; and

(f) One (1) of the following, which shall be deposited with and made payable to the commissioner:

1. An irrevocable letter of credit in an amount required by KRS 286.9-040(1)(a);

2. An original corporate surety bond, submitted on Form COMB-2, Surety Bond for Check Casher License or Limited Check Casher License, in an amount required by KRS 286.9-040(1)(b). The name of the principal insured on the bond shall match exactly the full legal name of the applicant; or

3. Form COMB-3, Escrow Agreement for Check Casher License or Limited Check Casher License, accompanied by:

a. Evidence that the applicant has established an account in a federally insured financial institution in Kentucky and has deposited money of the United States in an amount required by KRS 286.9-040(1)(c); or

b. A savings certificate of a federally insured financial institution in Kentucky established
by the applicant that is not available for withdrawal except by direct order of the commissioner in an amount required by KRS 286.9-040(1)(d).

(2) Renewal Application. A licensee applying for renewal of a check casher license or limited check casher license pursuant to KRS 286.9-080(1) shall complete and submit the following on or before June 20 of each year:

(a) Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments; and

(b) The nonrefundable license fee established in KRS 286.9-080(1).

(3) Reinstatement Application. A licensee applying for reinstatement of a check casher license or limited check casher license pursuant to KRS 286.9-080(2) shall complete and submit the following prior to August 1 of the year that the renewal application was due:

(a) Form COMB-4, Renewal Application for Check Casher License or Limited Check Casher License with all required attachments;

(b) The nonrefundable license fee established in KRS 286.9-080(1); and

(c) The nonrefundable late fee and reinstatement fee established in KRS 286.9-080(2).

Section 4. Licensure as a Mortgage Loan Company or Mortgage Loan Broker.

(1) Initial Application. A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit:

(a) A completed NMLS Company Form as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed NMLS Individual Form as available online at http://mortgage.nationwidelicensingsystem.org for each control person designated on the direct owners and executive officers section of the NMLS Company Form;

(c) An audited financial statement dated the previous year end to the date of submission of the NMLS Company Form. If applicant is a start-up company, an initial statement of condition and a pro-forma income statement shall be submitted instead of the income statement and statement of cash flows;

(d) An original bond, submitted on the appropriate form in an amount not less than the amount required by KRS 286.8-060(1). The name of the principal insured on the bond shall match exactly the full legal name of applicant.

1. For a mortgage loan company, Form ML-1, Surety Bond for Mortgage Loan Company; or

2. For a mortgage loan broker, Form ML-2, Surety Bond for Mortgage Loan Broker;

(e). A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the NMLS Company Form;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i) If the principal office will be located in a residence, a completed Form ML-6, Disclosure of Location at a Residence Form; and

(j) The fees set forth in KRS 286.8-034(1).

(2) Renewal Application.

(a) A person applying for renewal of a mortgage loan company or mortgage loan broker license prior to December 1 shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC is correct as available online at http://mortgage.nationwidelicensingsystem.org; and

2. The fee set forth in KRS 286.8-034(3).

(b) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-034(4).

(3) Change of Address, Name, Control, or Agent for Service.

(a) A licensee changing its address, name, or agent for service of process shall notify the commissioner:

1. At least ten (10) days prior to the change of address or name; and

2. Five (5) days prior to the change of agent for service of process.

(b) A licensee that wants to engage in a transaction resulting in a change of control shall notify the commissioner at least thirty (30) days in advance with the information necessary for the commissioner to determine whether the requirements of KRS Chapter 286.8 will be satisfied upon the change of control. The commissioner shall notify the licensee whether the request is approved or denied within thirty (30) days.

(c) A licensee changing its address, name, control, or agent for service of process shall update this information in Nationwide Mortgage Licensing System (NMLS) within the same time periods set forth in this section.

Section 5. Registration of a Mortgage Loan Company Branch.

(1) A mortgage loan company branch shall not be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2) A person applying for registration of a branch shall submit the following:

(a) A completed NMLS Branch Form as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A copy of the lease or deed for the branch;

(c) A completed Form ML-7, Branch Authorization Form;

(d) If the branch will be located in a residence, a Form ML-6, Disclosure of Location at a Residence Form; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(3) A person applying for renewal of a branch registration prior to December 1 shall submit all materials required by Section 4(2)(a) of this administrative regulation.

(4) A person applying for renewal of a branch registration through reinstatement shall submit all materials required by Section 4(2)(a) of this administrative regulation and the reinstatement fee required by KRS 286.8-034(4).

Section 6. Registration of a Mortgage Loan Originator.

(1) Initial registration. A person applying for registration as a mortgage loan originator pursuant to KRS 286.8-255(2) shall submit:

(a) A completed NMLS Individual Form as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and

(d) The fee set forth in KRS 286.8-255(2)(b).

(2) Renewal registration.

(a) A person applying for renewal of a mortgage loan originator registration pursuant to KRS 286.8-255(4) shall submit:

1. The required updates and attestation ensuring that all information in the person's record maintained by the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC is correct as available online at http://mortgage.nationwidelicensingsystem.org;

2. A request to submit a Federal Bureau of Investigation background records check and a credit report to the department;

3. Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and

4. The fee set forth in KRS 286.8-255(4).

(b) A person applying for renewal of a mortgage loan originator registration through reinstatement shall submit all materials required by paragraph (a) of this subsection and the reinstatement fee required by KRS 286.8-255(5).

(3) The cost of any Federal Bureau of Investigation background records check or credit report required by this section shall be borne by the applicant.

Section 7. Mortgage Loan Originator Bond Requirements. In addition to the requirements set forth in this administrative regulation, an applicant applying for registration, renewal, or renewal through reinstatement as a mortgage loan originator shall provide proof that the mortgage loan originator holds or is covered by a bond. If the mortgage loan originator is procuring his or her own bond, the bond shall be submitted on the applicable Surety Bond for Individual Mortgage Loan Originators form and in an amount determined by annual loan origination as follows:

(1) If the annual loan volume of the applicant is less than $10,000,000, the surety bond shall be in an amount not less than $15,000 and the applicant shall submit Form ML-3, Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of Less than $10,000,000; or

(2) If the annual loan volume of the applicant is $10,000,000 or more, the surety bond shall be in an amount not less than $20,000 and the applicant shall submit Form ML-4, Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of $10,000,000 or Greater.

Section 8. Factors Used to Determine Approval or Disapproval of an Application.

(1) A mortgage loan originator applicant seeking registration, renewal, or renewal through reinstatement under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle.

(2) Each applicant shall authorize the commissioner to obtain a credit report containing a credit score to aid in making this determination.

(3) The applicant shall have met the requirement of financial responsibility if he or she possessed a credit score of 600 or higher at the time of application. If the applicant possesses a credit score of less than 600, the commissioner may review the applicant's credit report for the following information to make this determination:

(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;

(b) Any outstanding tax liens or other governmental liens;

(c) Any foreclosures occurring within five (5) years of the date of application or renewal;

(d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and

(e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

(4) The factors of character and general fitness shall be determined by the commissioner after review of all relevant information, including information shown on the applicant's credit report, the applicant's criminal history, and any administrative or civil actions taken against the applicant.

Section 9. Electronic Submission of Filings and Fees through the Nationwide Mortgage Licensing System Operated by the State Regulatory Registry, LLC.

(1) A person applying for licensure, registration, renewal, or renewal through reinstatement pursuant to Sections 4, 5, 6, and 7 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at http://www.stateregulatoryregistry.org/NMLS, as part of the nationwide mortgage licensing system:

(a) All forms, updates, attestations, and requests required by Sections 4, 5, 6, and 7 of this administrative regulation, as applicable;

(b) Fingerprints and any other information or authorizations necessary to obtain the background records checks and credit reports referenced in Section 6 of this administrative regulation; and

(c) All fees referenced in this administrative regulation.

(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC shall be submitted directly to the department.

(3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions referenced in subsection (1) of this section shall be borne by the applicant.

Section 10. Abandoned Applications. If any applicant fails to provide or respond to a request for additional information within ninety (90) days of submission to the department, the application shall be abandoned. Any applicant seeking licensing or registration after its application has been abandoned shall reapply and resubmit all required information.

Section 11. Inactive Status for Members of the Armed Forces.

(1) A member of the Armed Forces who holds a license or registration in good standing under this administrative regulation may request that the commissioner place the license or registration in inactive status during the period of time that the member is mobilized or deployed, and for a period of six (6) months following termination of the mobilization or deployment.

(2) To request inactive status for a license or registration, a person shall complete Form ML-8, Request for Inactive Status Due to Military Service and submit it along with proof of mobilization or deployment to the commissioner for approval.

(3) A person whose license or registration has been placed in inactive status shall not engage in the activity requiring the license or registration under KRS Chapter 286.8.

(4) The fee set forth in KRS 286.8-255(4) shall not accrue against any person whose license or registration is in inactive status.

(5) A person may reactivate an inactive license or registration by submitting a written request to the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form CL-1, "Application for a Kentucky Consumer Loan License", updated 03/2015

(b) Form CL-4, "State License Confirmation Form", updated 03/2015;

(c) Form LCC-1, "Application for Limited Check Casher License", updated 04/2016

(d) Form COMB-4, "Renewal Application for Check Casher License or Limited Check Casher License", updated 04/2014;

(e) Form ML-1, "Surety Bond for Mortgage Loan Company", updated 03/2015;

(f) Form ML-2, "Surety Bond for Mortgage Loan Broker", updated 03/2015;

(g) Form ML-3, "Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of Less than $10,000,000", updated 03/2015;

(h) Form ML-4, "Surety Bond for Individual Mortgage Loan Originators with an Annual Loan Origination Volume of $10,000,000 or Greater", updated 03/2015;

(i) Form ML-6, "Disclosure of Location at a Residence Form", updated 03/2015;

(j) Form ML-7, "Branch Authorization Form", updated 03/2015; and

(k) Form ML-8, "Request for Inactive Status Due to Military Service", updated 03/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at http://www.kfi.ky.gov.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation consolidates and relocates in one centralized location all regulatory provisions relating to the licensing of entities and individuals within the consumer loan, mortgage loan and check casher industries regulated by the Department of Financial Institutions.

(b) The necessity of this administrative regulation: This administrative regulation promotes clarity and compliance by more effectively informing Department licensees and registrants of applicable licensing procedures and requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. This administrative regulation establishes the procedures and forms for submitting an application for licensure as a consumer loan company pursuant to KRS 286.4-430. KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. This administrative regulation establishes procedures for licensure, registration, and electronic submission of filings and fees with the nationwide mortgage licensing system operated by the State Regulatory Registry, LLC. KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form of and the filing procedures for an application for a license under KRS Chapter 286.9 and the information and documents that must be submitted to the commissioner with an application for a license. This administrative regulation establishes the required forms, information, documents, and filing procedures for licensees and applicants proceeding pursuant to these statutes.

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

administrative regulation establishes the required forms, information, documents, and filing procedures for consumer loan, mortgage loan and check casher licensees and applicants pursuant to KRS 286.4-430(1), 286.4-430, 286.8-140(1), 286.9-050 and 286.9-060.

(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: While this administrative regulation centralizes and consolidates the Department's existing licensing and registration requirements to promote uniformity and ease of reference, it is a new regulation.

(b) The necessity of the amendment to this administrative regulation: While this administrative regulation centralizes and consolidates the Department's existing licensing and registration requirements to promote uniformity and ease of reference, it is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.9-090(1) authorizes the commissioner to adopt reasonable administrative regulations for the enforcement of KRS Chapter 286.9. KRS 286.9-050 and 286.9-060 authorize the commissioner to prescribe the form of and the filing procedures for an application for a license under KRS Chapter 286.9 and the information and documents that must be submitted to the commissioner with an application for a license. This administrative regulation establishes the required forms, information, documents, and filing procedures for licensees and applicants proceeding pursuant to these statutes.

(d) How the amendment will assist in the effective administration of the statutes: While this administrative regulation centralizes and consolidates the Department's existing licensing and registration requirements to promote uniformity and ease of reference, it is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While this administrative regulation will affect the 9,850 consumer loan, mortgage loan and check casher industries registered and licensed by the Department, it will not substantively change any of the existing regulatory provisions.

(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: Though the regulated entities will need to comply with the licensing and registration requirements established in this administrative regulation, none of these underlying requirements are being substantively amended or modified in any way.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Though the regulated entities will need to comply with the licensing and registration requirements established in this administrative regulation, and pay the fees set forth therein, none of these underlying requirements and related fees are being substantively amended or modified in any way.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit from the improved, clarified and streamlined organizational structure this administrative regulation provides to the existing licensing and registration procedures.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No funding will be required for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: While this administrative regulation will impose registration and licensing-related fees in the consumer loan, mortgage loan and check casher industries, it simply consolidates and more efficiently organizes the regulatory treatment of the existing fees, and creates no substantive change to the current fee structure.

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions will be affected 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 286.4-610(1), 286.4-430(1), 286.8-140(1), 286.9-090(1), 286.9-050, 286.9-060.

(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 amount of revenue this administrative regulation generates will depend on the number of license and registration applicants. Based on current licensee numbers, the administrative regulation will generate $1,483,000 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 amount of revenue this administrative regulation generates will depend on the number of license and registration applicants. Based on current licensee numbers, the administrative regulation will generate $1,483,000 per year in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new costs to administer this program for the first year; Department staff already responsible for licensing and registrations will remain responsible for implementation of new requirements.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to administer this program for subsequent years; Department staff already responsible for licensing and registrations will remain responsible for implementation of new requirements.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: While this administrative regulation will impose registration and licensing-related fees in the consumer loan, mortgage loan and check casher industries, it simply consolidates and more efficiently organizes the regulatory treatment of the existing fees, and creates no substantive change to the current fee structure. The regulations establishing the existing fees are being repealed concurrent with the enactment of this new regulation, culminating in a revenue neutral net result.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(New Administrative Regulation)

808 KAR 1:180. Use of Special Restricted Funds.

RELATES TO: KRS 286.8-150, 286.8-225, 286.8-227, 292.322
STATUTORY AUTHORITY: KRS 286.8-140(1), 286.8-227, 292.322(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-227 makes the commissioner responsible for the distribution of funds from the Mortgage Fraud Prosecution fund. KRS 292.322(6) makes the commissioner responsible for the distribution of moneys in the Securities Fraud Prosecution and Prevention Fund. This administrative regulation establishes the procedures for distributing and using the money from the Mortgage Fraud Prosecution Fund and the Securities Fraud Prosecution and Prevention Fund.

Section 1. Definitions.
(1) "Commissioner" means the commissioner of the department.
(2) "Department" means the Department of Financial Institutions.
(3) "Mortgage Fraud Prosecution Fund" means the account established under KRS 286.8-225 and 286.8-227.
(4) "Securities Fraud Prosecution and Prevention Fund" means the account established under KRS 292.322(1).
(5) "Prosecutorial agency" and "outside agency" means:
(a) The office of the Kentucky Attorney General;
(b) The office of the United States Attorney;
(c) The office of any county or commonwealth attorney in the Commonwealth of Kentucky; or
(d) Any other state or federal regulatory agency.

Section 2. Authorization for Use of Funds.
(1) The commissioner may disburse funds held in the Mortgage Fraud Prosecution Fund and the Securities Fraud Prosecution and Prevention Fund to cover the expenses of the department, any prosecutorial agency, or an outside agency for the purposes of prosecuting or aiding the prosecution of fraudulent securities-related activities or fraudulent activities in the mortgage lending process, whether arising from an investigation initiated or conducted by the department or from the independent investigation of any law enforcement or outside agency. In addition, the funds may be used to cover the expenses for training related to the prevention, detection, or investigation of securities-related or mortgage-related fraud, and for consumer education aimed at preventing victimization by securities-related or mortgage-related fraud.
(2) Prosecution and other authorized expenses may relate to the following:
(a) Training and equipment;
(b) Investigation;
(c) Trial preparation and trial, including discovery;
(d) Witness expenses;
(e) Travel expenses;
(f) Sentencing;
(g) Appeal; or
(h) Consumer education initiatives.

Section 3. Application and Approval for Disbursement of Funds.
(1) The department may utilize any of the following for application, approval, and disbursement of funds to prosecutorial or other outside agenc~~i~~es:
(a) A written agreement or memorandum of understanding with a~~n~~ prosecutorial or other outside agency covering actual expenses for a set period of time or the actual expenses for a particular prosecution, investigation, training, or initiative. Each agreement or memorandum of understanding shall be signed by the commissioner and an authorized representative of the prosecutorial or other outside agency and shall identify:
1. The effective period;
2. The expenses to be covered;
3. The dollar limit, if any; and
4. The manner and form of billing expenses and the process for disbursement of funds.
(b) A written application submitted to the department for payment of prosecution-related or other authorized expenses shall include the following information:
1. The agency applicant name, address, and contact information;
2. A detailed description and estimated amount of the expenses sought to be covered, or if expenses have already been incurred, proof of incurrence of these expenses;
3. A detailed description of the cases, persons, and crimes being considered for prosecution, if applicable; and
4. A detailed description of the expenses, training, or initiative being proposed or sought for reimbursement.
(c) For funds sought to be utilized for the purposes set forth in Section 2 of this administrative regulation, the commissioner shall maintain an accounting and memorandum of all these expenditures which shall include the information required under paragraph (b) of this subsection.
(2) The commissioner shall approve or deny the application for funds in writing. The approval shall contain the terms of disbursement including the maximum amount to be reimbursed, the billing process to be implemented, and reporting requirements for the disbursement of funds.
(3) A completed invoice or voucher in a form acceptable to the commissioner shall be submitted for all expenses for which payment or reimbursement from the account is sought.

Section 4. Funding Criteria. Allocation of funds by the commissioner to prosecutorial or other agencies shall be based on funds available in the mortgage fraud prosecution fund, funds available in the securities fraud prosecution and prevention fund, and:
(1) The likelihood that any investigation or inquiry will lead to criminal prosecution;
(2) Whether criminal prosecution is imminent; or
(3) A demonstration of need for funds to accomplish the purposes set forth in Section 2 of this administrative regulation.

Section 5. Disbursement Limitation. The commissioner shall not be required to disburse any funds unless the respective funds contain sufficient amounts to cover the agreed disbursements. The commissioner and the department shall not be required to make disbursements from the department's own operating funds.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary
APPROVED BY AGENCY: December 14, 2018
FILED WITH LRC: December 14, 2018 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.
CONTACT PERSON: Joseph P. Donohue, General Counsel,

Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of: This administrative regulation establishes the procedures for distributing and using the money from the Mortgage Fraud Prosecution Fund and the Securities Fraud Prosecution and Prevention Fund.

(a) What this administrative regulation does: This administration regulation offers transparency setting forth the requirements for the distribution of funds in the Mortgage Fraud Prosecution Fund and for the use of money in the Securities Fraud Prosecution and Prevention Fund.

(b) The necessity of this administrative regulation: This administrative regulation fulfills the statutory mandate that the commissioner establish the mandatory treatment of money in the existing prosecution funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-227 makes the commissioner responsible for the distribution of funds from the Mortgage Fraud Prosecution fund. KRS 292.322(6) makes the commissioner responsible for the distribution of moneys in the Securities Fraud Prosecution and Prevention Fund. This administrative regulation establishes the procedures for distributing and using the money from the Mortgage Fraud Prosecution Fund and the Securities Fraud Prosecution and Prevention Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the statutory mandate that the commissioner establish the mandatory treatment of money in the existing prosecution funds.

(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 merges into one regulation two separate regulations instituting the same set of procedures for distributing and using the money from the Mortgage Fraud Prosecution Fund and the Securities Fraud Prosecution and Prevention Fund.

(b) The necessity of the amendment to this administrative regulation: The amendment streamlines, consolidates and clarifies the existing regulatory framework to the benefit of the department, regulated entities and the general public.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with, and continues to conform to, the authorization provided for the original regulation by KRS 286.8-140(1), 286.8-227 and 292.322(6).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will streamline and consolidate the regulatory framework, but continue to fulfill the statutory mandate that the commissioner establish procedures for the treatment of money in the prosecution funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The impact of this administrative regulation will be limited exclusively to the Department of Financial Institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This consolidating regulation will not require any change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The department, regulated entities and the public will benefit from the proposed consolidation and clarification of the existing regulatory framework.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No additional funding will be required for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.8-140(1), KRS 286.8-227 and KRS 292.322(6).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation 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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Repealer)

808 KAR 3:061. Repeal of 808 KAR 3:020; 3:060.

RELATES TO: KRS 286.6-070, 286.6-100, 286.6-405, 290.095, 290.585, 12 C.F.R. Part 749

STATUTORY AUTHORITY: KRS 286.1-020(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. This administrative regulation repeals two (2) administrative regulations relating to credit unions whose necessary substantive provisions are more efficiently addressed elsewhere in the department's regulatory scheme. 808 KAR 3:020 is being repealed and its subject matter addressed by new concurrently promulgated administrative regulations in 808 KAR Chapter 2 governing record retention for all department licensees. 808 KAR 3:060 is being repealed because its subject matter is more appropriately addressed as part of 808 KAR 3:050 governing the conduct of Credit Unions.

Section 1. The following administrative regulations are hereby repealed:

(1) 808 KAR 3:020, Records retention schedule; and

(2) 808 KAR 3:060, Investment authority of state-chartered credit unions.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 3:020 and 3:060, whose necessary substantive provisions are more efficiently relocated within the department's revised regulatory scheme.

(b) The necessity of this administrative regulation: This administrative regulation repealer is necessary to more logically and efficiently organize the regulatory framework applicable to state-chartered credit unions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as required to interpret and carry out the provisions and intent of this chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will allow state chartered credit unions to comply with uniform record retention policies and procedure requirements applicable to all department licensees and utilize a better-organized, more streamlined regulatory framework.

(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 administrative 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 will affect the 22 credit unions presently chartered 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: This administrative regulation is a repealer that will facilitate compliance for all of the 22 state chartered credit unions subject to the department's regulatory jurisdiction.

(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 is a repealer that will not require compliance from any regulated entity.

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

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is a repealer that will facilitate compliance with the department's regulatory scheme for all regulated entities.

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

(a) Initially: There will be no initial cost to implement this repeal of administrative regulations.

(b) On a continuing basis: There will be no continuing cost to implement this repeal of administrative regulations.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: No funding will be required for the implementation and enforcement 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: No increase in fees or funding will be 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this repealer will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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 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? There will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Repealer)

808 KAR 5:041. Repeal of 808 KAR 5:040.

RELATES TO: KRS 286.7

STATUTORY AUTHORITY: KRS 286.7-530, 286.1-020(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. KRS 286.7-530 requires the commissioner to promulgate regulations to enforce KRS 286.7-410 to 286.7-600. This administrative regulation repeals 808 KAR 5:040 because record retention and procedures for industrial loan certificate holders are more efficiently addressed in a concurrently promulgated new regulation at 808 KAR 14:010 applicable to all department licensees.

Section 1. 808 KAR 5:040, Retention of records; examination, is hereby repealed.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 5:040, whose necessary substantive provisions are more efficiently relocated within the department's regulatory scheme as part of a concurrently promulgated records retention regulation at 808 KAR 14:010 applicable to all department licensees.

(b) The necessity of this administrative regulation: This administrative regulation repealer is necessary to improve efficiency and ease of use for applicants and licensees of the Department of Financial Institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as required to interpret and carry out the provisions and intent of this chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this regulation will allow industrial loan companies to comply with uniform record retention policies and procedure requirements applicable to all department licensees.

(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 administrative 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: One industrial loan company will be required to comply with the new, concurrently promulgated regulation at 808 KAR 14:010.

(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: This administrative regulation is a repealer that will facilitate compliance for all industrial loan companies subject to the department's regulatory jurisdiction.

(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 is a repealer that will not require compliance from any regulated entity.

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

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is a repealer that will facilitate compliance with the department's regulatory scheme for all regulated industrial loan companies.

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

(a) Initially: There will be no initial cost to implement this regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: No funding will be required for the implementation and enforcement 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: No increase in fees or funding will be 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this repealer will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020(1), 286.7-530.

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 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 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? There will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Repealer)

808 KAR 6:121. Repeal of 808 KAR 6:015; 6:105; 6:115; and 6:120.

RELATES TO: KRS 286.4

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.4-610(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of consumer loan businesses licensed under KRS Chapter 286.4. This administrative regulation repeals four (4) administrative regulations whose subject matter is more efficiently addressed as part of other administrative regulations in Title 808 of the Kentucky Administrative Regulations. 808 KAR 6:015 is being repealed because licensure is better addressed in a concurrently promulgated new administrative regulation at 808 KAR 1:030 governing all department licensees. 808 KAR 6:105, 6:115, and 6:120 are being repealed because recordkeeping requirements are more efficiently addressed in a concurrently promulgated new administrative regulation at 808 KAR 14:010 governing all department licensee records.

Section 1. The following administrative regulations are hereby repealed:

(1) 808 KAR 6:015, Licensure application; annual report;

(2) 808 KAR 6:105, Records required;

(3) 808 KAR 6:115, Note reduced to judgment; records; and

(4) 808 KAR 6:120, Sale of mortgaged property; records.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 6:015; 808 KAR 6:105; 808 KAR 6:115; and 808 KAR 6:120, whose necessary substantive provisions are more efficiently relocated within the department's regulatory scheme as part of 808 KAR 1:170 and 808 KAR 14:010.

(b) The necessity of this administrative regulation: This administrative regulation repealer is necessary to simplify the licensing and recordkeeping requirements for consumer loan companies to make them more consistent with the requirements of other department licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repealer will make compliance with department regulations easier by consolidating them into concurrently promulgated new administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This 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 administrative 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 will affect the 382 consumer loan companies licensed 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: This administrative regulation is a repealer that will facilitate compliance for all consumer loan companies subject to the department's regulatory jurisdiction.

(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 is a repealer that will not require compliance from any regulated entity.

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

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is a repealer that will facilitate compliance with the department's regulatory scheme for all regulated consumer loan companies.

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

(a) Initially: There will be no initial cost to implement this regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: No funding will be required for the implementation and enforcement 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: No increase in fees or funding will be 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this repealer will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020(1), 286.8-140.

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 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 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? There will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Repealer)

808 KAR 9:031. Repeal of 808 KAR 9:020 and 808 KAR 9:030.

RELATES TO: KRS 286.9-090(1), 286.9-110, 286.9-120

STATUTORY AUTHORITY: KRS 286.1-020(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. This administrative regulation repeals 808 KAR 9:020 and 9:030 because examination fees and hearing procedures for check cashing companies are more efficiently addressed in concurrent amendments to 808 KAR Chapter 1 and by applying KRS Chapter 13B to administrative proceedings for all department licensees.

Section 1. The following administrative regulations are hereby repealed:

(1) 808 KAR 9:020, Establishment of examination fees; and

(2) 808 KAR 9:030, Administrative hearing procedures.

CHARLES A. VICE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787; email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 9:020 and 9:030, whose

necessary substantive provisions are more efficiently relocated within the department's regulatory scheme.

(b) The necessity of this administrative regulation: This repealer more logically and efficiently consolidates and arranges regulatory provisions to reduce duplication and confusion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Under 286.8-140, the commissioner may prescribe, amend, or rescind such rules, regulations, and forms as necessary and appropriate to accomplish the basic purposes of this subtitle. In addition, KRS 286.1-020(1) authorizes the commissioner to repeal any administrative regulations as necessary to carry out the intent of this chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Licensees will benefit from the enhanced organizational clarity and efficiency provided by this regulatory change.

(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 administrative 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 regulation will affect the Department of Financial Institutions' 440 check casher licensees.

(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: This administrative regulation is a repealer that will facilitate compliance for all check cashing companies subject to the department's regulatory jurisdiction.

(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 is a repealer that will not require compliance from any regulated entity.

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

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is a repealer that will facilitate compliance with the department's regulatory scheme for all regulated check cashing companies.

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

(a) Initially: There will be no initial cost to implement this regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: No funding will be required for the implementation and enforcement 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: No increase in fees or funding will be 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this repealer will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020(1), 286.8-140.

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 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 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? There will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None. While this administrative regulation repeals 808 KAR 9:020 through which the department collects examination fees from check casher licensees, the collection of such examination fees are being repromulgated as part of a new administrative regulation in 808 KAR Chapter 1 addressing fees of all of the department's regulated entities. This repealer, therefore, is ultimately revenue neutral.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Repealer)

808 KAR 11:021. Repeal of 808 KAR 11:020.

RELATES TO: KRS 286.3-095, 286.3-905

STATUTORY AUTHORITY: KRS 286.1-020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. This administrative regulation repeals 808 KAR 11:020 because review procedures for bank holding company applications are more efficiently addressed in a concurrently promulgated new regulation at 808 KAR 15:040 governing multibank companies.

Section 1. 808 KAR 11:020, Procedures, is hereby repealed.

CHARLES A. VICE, COMMISSIONER
K. GAIL RUSSELL, ACTING SECRETARY

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 11:020, the substantive provisions of which are more efficiently relocated within the department's regulatory scheme as part of a concurrently promulgated new regulation at 808 KAR 15:040 governing multibank companies.

(b) The necessity of this administrative regulation: This administrative regulation repealer is necessary to improve efficiency and ease of use for applicants and licensees of the Department of Financial Institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) authorizes the commissioner of the Department of Financial Institutions to repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will streamline and facilitate compliance for all bank holding company applicants.

(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 administrative 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: In the last five years, 20 licensed institutions have been impacted by this regulation. Many of these licensees will be required to comply with the new, concurrently promulgated regulation at 808 KAR 15:040.

(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: This administrative regulation is a repealer that will facilitate compliance for all bank holding company applicants subject to the department's regulatory jurisdiction.

(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 is a repealer that will not require compliance from any regulated entity.

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

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is a repealer that will facilitate compliance with the department's regulatory scheme for all bank holding company applicants.

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

(a) Initially: There will be no initial cost to implement this regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: No funding will be required for the implementation and enforcement 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: No increase in fees or funding will be 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this repealer will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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 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? There will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Repealer)

808 KAR 12:111. Repeal of 808 KAR 12:002; 12:021; 12:022; 12:023; 12:024; 12:026; 12:030; and 12:110.

RELATES TO: KRS 286.8

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to exercise general supervision and control over mortgage loan companies and

mortgage loan brokers doing business in the Commonwealth of Kentucky by amending or rescinding rules and administrative regulations necessary and appropriate to accomplish the basic purposes of and the provisions contained within KRS 286.8. This administrative regulation repeals eight (8) administrative regulations that are unnecessary or whose necessary substantive provisions are more efficiently addressed as part of other administrative regulations in Title 808 of the Kentucky Administrative Regulations. 808 KAR 12:002 is no longer necessary because all current definitions are either already in statute or more efficiently relocated to the individual administrative regulation where the term appears. Necessary substantive provisions from 808 KAR 12:021 and 808 KAR 12:024 regarding licensing, registration, and changes to licensee information are being repromulgated as part of a new comprehensive administrative regulation governing all department licensees at 808 KAR 1:170 for administrative efficiency. Necessary substantive provisions from 808 KAR 12:022 are being combined with 808 KAR 1:140, which is concurrently being amended to govern all examination and investigation fees for department licensees. Recordkeeping requirements set forth by 808 KAR 12:023 and 12:110 are being repromulgated as part of a new administrative regulation governing recordkeeping by all department licensees at 808 KAR 14:010. 808 KAR 12:030 is being repealed because rather than having separate processes and procedure, the Department intends to use KRS 13B for all administrative hearings moving forward.

Section 1. The following administrative regulations are hereby repealed:

(1) 808 KAR 12:002, Definitions for 808 KAR Chapter 12;

(2) 808 KAR 12:021, Licensing and registration;

(3) 808 KAR 12:022, Examination and investigation fees;

(4) 808 KAR 12:023, Recordkeeping;

(5) 808 KAR 12:024, Change of address, name, control, or agent for service of process;

(6) 808 KAR 12:026, Procedures for distributing and using funds from the mortgage fraud prosecution fund;

(7) 808 KAR 12:030, KRS Chapter 286.8, administrative hearing procedures; and

(8) 808 KAR 12:110, Report of condition.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787; email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 12:002, 12:021, 12:022, 12:023, 12:024, 12:026, 12:030, and 12:110, which are either unnecessary or whose necessary substantive provisions are more efficiently relocated within the department's regulatory scheme.

(b) The necessity of this administrative regulation: This amendment enhances regulatory compliance of state licensed mortgage lenders through a more streamlined and better organized regulatory framework.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the commissioner to exercise general supervision and control over mortgage loan companies and mortgage loan brokers doing business in the Commonwealth of Kentucky by amending or rescinding rules and regulations necessary and appropriate to accomplish the basic purposes of and the provisions contained within KRS 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is a repealer that will facilitate compliance with the department's regulatory scheme for all regulated mortgage loan companies and mortgage loan brokers.

(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 administrative 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: While the repealer will be applicable to all 1,468 licensees, it will have no material change on any of their regulatory obligations.

(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: This administrative regulation is a repealer that will facilitate compliance for all mortgage loan companies and mortgage loan brokers subject to the department's regulatory jurisdiction.

(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 is a repealer that will not require compliance from any regulated entity.

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

(c): As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is a repealer that will facilitate compliance with the department's regulatory scheme for all regulated mortgage loan companies and mortgage loan brokers.

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

(a) Initially: There will be no initial cost to implement this regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: No funding will be required for the implementation and enforcement 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: No increase in fees or funding will be 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this repealer will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-020(1), 286.8-140.

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 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 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? There will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(New Administrative Regulation)

808 KAR 14:010. Record retention.

RELATES TO: KRS Chapter 286, 12 C.F.R. Part 749

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.3-375, 286.4-610(1), (3), 286.6-070, 286.7-530, 286.8-140(1), 286.8-160(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.3-375(4) requires the Commissioner to promulgate an administrative regulation classifying all records kept by a bank and prescribing the time period for which records of each class shall be retained. KRS 286.1-020(1) and 286.6-070 authorize the commissioner to promulgate administrative regulations for the proper conduct and regulation of credit unions. KRS 286.8-160(2) authorizes the commissioner to promulgate administrative regulations establishing preservation requirements for records governed by KRS Chapter 286.8. KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. KRS 286.7-530 authorizes the commissioner to promulgate administrative regulations for the proper conduct of the industrial loan corporations licensed under KRS Chapter 286.7. This administrative regulation establishes recordkeeping requirements for department licensees.

Section 1. Definition. "Record" means any books of account or other books, journals, ledgers, statements, instruments, documents, files, messages, writings, or other internal or other data or other information, made or received by a financial institution in the regular course of its business or otherwise, regardless of the mode in which it is recorded.

Section 2. Preservation Period for Records.

(1) Unless a longer period is required by federal law, state statute, or administrative regulation, licensees shall maintain records in accordance with the Records Retention Schedule promulgated by the Department.

(2) Credit Unions' Records Retention Schedule.

(a) Unless a longer retention period is required by subsection (b) of this section or other law, credit unions shall comply with the records retention guidelines set forth in Appendix A to 12 C.F.R. Part 749.

(b) A credit union shall retain all records for at least twenty-four (24) months after the close of the calendar year during which the record was generated.

(c) Credit unions shall maintain a vital records preservation program in compliance with 12 C.F.R. Part 749.

Section 3. Form of Records. All records required to be retained by licensees shall be:

(1) Current and accurate;

(2) Retained in a format capable of being transmitted or reproduced; and

(3) Immediately accessible and retrievable for examination upon request by the commissioner or any person designated by the commissioner for examination, investigation, or other authorized purposes.

Section 4. Loan Licensee Records.

(1) Industrial loan and consumer loan licensees shall keep and maintain the following specific accounting records:

(a) "Loan register" or its equivalent record, which shall be the book of original entry and permanent record, and shall properly identify each account by:

1. Number;

2. Date of loan; and

3. Amount of loan;

(b) An individual account ledger card with borrowers which shall:

1. Show the name and address of the borrower, the loan number, the amount and date of the loan and of its maturity, rate of interest, terms of repayment, the nature of the security, if any, for the loan and the dates of receipt and payment of recording fees together with the amount;

2. Provide separate columns for payments of principal;

3. Be kept in a manner that clearly shows the balance due on principal;

4. Have all payments credited promptly;

5. Have loan or payment cards for consumer loans, industrial loans, and sales finance loans maintained in separate files at all times; and

6. If an error is made on the individual account ledger or card, be appropriately corrected without erasures;

(c) An appropriate filing system, which shall contain all the current evidences of indebtedness or security which have been signed by the borrower; and

(d) An individual index record that shall be maintained for every endorser, accommodation comaker, or surety, except a spouse listed on the record of the borrower.

(2) If a note has been reduced to judgment by a consumer loan company, the face of the account ledger or card shall show:

(a) Name of court.

(b) Date of judgment.

(c) Amount of judgment.

(d) Court costs.

(e) Defendant against whom judgment obtained.

(3) In case of the sale of mortgaged property by a consumer

loan company:

(a) The face of the account ledger or card shall show:

1. How possession of security was obtained, and when.

2. When and how sold (public or private sale), including:

a. If all the security is sold; and

b. Proper identification of all credits from proceeds of sale;

(b) The files of the licensee shall include:

1. A copy of the notice of the sale;

2. A copy of the statement of final account, the original of which must have been sent to the borrower after the sale; and

3. If the property is abandoned and the address of the borrower is uncertain or unknown, notice of sale and statement of final accounting shall be sent to the last known address by certified mail or registered mail, return receipt requested.

Section 5. Cessation of Business. At least ten (10) days prior to the cessation of business, a licensee shall submit a completed Notification of Cessation of Business, Location of Physical Records, and Designation of Records Custodian Form.

Section 6. Incorporation by Reference.

(1) "The Record Retention Schedule", dated July 1, 2006, is incorporated by reference.

(2) The "Notification of Cessation of Business, Location of Physical Records, and Designation of Records Custodian Form", dated 08/2010.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES A. VICE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes recordkeeping requirements for the Department of Financial Institutions licensees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide clarity and consistency regarding recordkeeping requirements for ease of compliance by the Department of Financial Institution licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to all recordkeeping requirements established or authorized in KRS Chapter 286. Where specific laws apply to particular types of licensees, it is reflected in the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will facilitate compliance by licensees and compliance checks by the Department of Financial Institutions by simplifying and clarifying requirements and expectations regarding recordkeeping.

(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: Although licensee recordkeeping requirements are currently spread across several regulations being concurrently repealed or amended, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Although licensee recordkeeping requirements are currently spread across several regulations being concurrently repealed or amended, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Although licensee recordkeeping requirements are currently spread across several regulations being concurrently repealed or amended, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Although licensee recordkeeping requirements are currently spread across several regulations being concurrently repealed or amended, 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 affect 9,962 individuals and entities under the supervision of the Department of Financial Institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity regulated by the Department of Financial Institutions will have to retain specified records for a time period set by the incorporated records retention schedule in a format capable of being transmitted or reproduced and accessible for examination upon request 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): Costs for retaining required records in an acceptable format will vary depending on the scope and size of the regulated institution. The requirements contemplated by this administrative regulation are not new, so record retention costs are not new to licensees, either; this administrative regulation is an attempt to simplify and standardize the process in a manner that facilitates compliance for regulated entities and enforcement for the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will have an easier time following the standardized requirements and responding to the department's requests for records as a result of compliance with this administrative regulation.

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

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

(b) On a continuing basis: There will be no continuing cost to the department 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: No funding is necessary to implement this administrative regulation. Enforcement costs related to this administrative regulation will be part of the department's existing and ongoing enforcement efforts.

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

administrative regulation will not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation treats similarly situated regulated entities similarly.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.3-375, 286.1-020(1), 286.4-610(1), (3), 286.6-070, 286.7-530, 286.8-140(1), 286.8-160(2).

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

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

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

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

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

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(New Administrative Regulation)

808 KAR 14:020. Annual reporting.

RELATES TO: KRS 286.4-590

STATUTORY AUTHORITY: KRS 286.4-590, 286.4-610(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan businesses licensed under KRS Chapter 286.4. This administrative regulation establishes the forms on which a licensee shall submit annual reports pursuant to KRS 286.4-590.

Section 1. Consumer Loan Licensees. A person filing an annual report pursuant to KRS 286.4-590 shall complete and submit the following on or before January 30 of each year:

(1) Form CL-2, Annual Report to the Department of Financial Institutions; and

(2) If the person has more than one (1) licensed location and chooses to complete Form CL-2 as a composite report for all locations, a Form CL-3, Supplement to the Annual Report to the Department of Financial Institutions for each licensed location.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Annual Report to the Department of Financial Institutions", Form CL-2, March 2015.

(b) "Supplement to the Annual Report to the Department of Financial Institutions", Form CL-3, March 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787; email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the timing of annual reports for certain Department of Financial Institution licensees and incorporates the forms for required reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the form of compliance with statutory reporting requirements for department licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promotes and facilitates statutory compliance by establishing the forms on which licensees shall submit annual reports pursuant to KRS 286.4-590 and KRS 286.9-104.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will facilitate compliance by licensees and compliance checks by the Department of Financial Institutions by clarifying requirements and expectations regarding reporting.

(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: Although certain licensees currently submit a version of these required forms, the existing administrative regulations governing the submission and incorporating the forms are being concurrently repealed or amended; 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 affect the 382 consumer loan licensees regulated by the Department of Financial Institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By locating all annual reporting requirements in a single regulation, all department licensees will have an easier time complying with requirements and finding necessary forms.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No funding is necessary to implement this administrative regulation. Enforcement costs related to this administrative regulation will be part of the department's existing and ongoing enforcement efforts.

(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 increased any fees: This administrative regulation does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation treats similarly situated regulated entities similarly.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.4-610(1), 286.4-590, 286.9-090(1) and 286.9-104.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no 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 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(New Administrative Regulation)

808 KAR 15:010. Exceptions to bank lending limits.

RELATES TO: KRS 286.3-280, 286.3-290, 286.3-300

STATUTORY AUTHORITY: KRS 286.1-011, 286.1-020, KRS 286.3-290(2)

NECESSITY, FUNCTION, AND CONFORMITY: To establish the status of excess funds (federal funds) transactions so as to ensure the maintenance of competitive equality between state and national banks in Kentucky and to provide for an exception to the bank lending limits for excess funds transactions and loans or extensions of credit secured by certain types of government obligations.

Section 1. Definition. "Excess funds transaction" means a transaction between commercial banks involving the adjustment of their legal reserve positions through the short term transfer of reserve deposits.

Section 2. Excess funds transactions between state banks and between state and national banks shall be regarded as the interbank transfer of reserve deposits.

Section 3. The lending limits and reserve requirements set forth by KRS 286.3-280 and 286.3-300 shall not apply to:

(1) Excess fund transactions;

(2) Loans or extensions of credit secured by:

(a) Bonds, notes, certificates of indebtedness, treasury bills, and other direct obligations of the United States; or

(b) General obligations of the Commonwealth of Kentucky.

Section 4. To qualify for the exemption set forth in Section 3 of this administrative regulation, government obligations shall have a face value at least equal to the total of the principal of the loan or extension of credit and must mature within five (5) years of the date of the loan or extension of credit.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019 at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m.

on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the status of excess funds (federal funds) transactions so as to ensure the maintenance of competitive equality between state and national banks in Kentucky and provides for an exception to the bank lending limits for excess funds transactions and loans or extensions of credit secured by certain types of government obligations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to regulated entities and the public on: (a) the treatment of excess fund transactions intended to equalize treatment between state and national Kentucky banks; and (b) exceptions to the bank lending limits for such transactions secured by certain types of government obligations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-011 authorizes the Department of Financial Institutions to exercise all administrative functions of the state in relation to the regulation and supervision of banks. KRS 286.1-020 authorizes the commissioner to promulgate any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.3-290(2) directs that, with regard to obligations to banks and trust companies, the limitations and restrictions of KRS 286.3-280 shall not apply to obligations of the United States or of the State of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will promote a competitive balance between state and national banks in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This 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: While this regulation, which consolidates and streamlines existing regulations, will continue to impact the 121 state-chartered banks in Kentucky, it will have no material change on any of their regulatory obligations.

(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 consolidating regulation will not require any change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to benefitting from the increased convenience and efficiencies offered through consolidation, this regulation will retain all the compliance benefits offered by the original regulations.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No additional funding will be required for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-011, KRS 286.1-020 and KRS 286.3-290(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This consolidating 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 consolidating 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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(New Administrative Regulation)

808 KAR 15:020. Stay of notice of intention to remove from office.

RELATES TO: KRS 286.3-690(10)

STATUTORY AUTHORITY: KRS 286.1-011

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to apply for a

stay of a notice of intention to remove from office an officer or director of a bank pursuant to KRS 286.3-690(10), which affords a ten (10) day period for such application.

Section 1. To obtain a stay of a Notice of Intention to Remove from Office, issued by the Commissioner pursuant to KRS 286.3-690(8), parties shall follow the procedures set forth in Civil Rule 65 of the Kentucky Rules of Civil Procedure.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary
APPROVED BY AGENCY: December 14, 2018
FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the procedures for a bank officer or director to apply for a stay of a notice of intention to remove from office provided by KRS 286.3-690(10).

(b) The necessity of this administrative regulation: This administrative regulation provides information required to permit bank officers and directors to exercise a statutory right.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-011 authorizes the Department of Financial Institutions to exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks. KRS 286.1-020 authorizes the commissioner to promulgate any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.3-690(10) provides a right to bank officers and directors to seek a stay of notice of intention to remove from office, and this administrative regulation sets forth the procedures through which to make such an application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance and direction to bank officers and directors who wish to exercise a statutory right.

(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: While this regulation, which streamlines and reorganizes the department's regulatory framework, will continue to impact the 121 state-chartered banks in Kentucky, it will have no material change on any of their regulatory obligations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will not require any change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will help facilitate the exercise of a statutorily granted right by bank officers and directors.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No additional funding will be required for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-011, 286.1-020 and 286.3-690(10).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue 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 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 will be no cost to administer the program for the first year.

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

subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(New Administrative Regulation)

808 KAR 15:030. Bank branches, offices, and loan production offices.

RELATES TO: KRS 286.3-102, 286.3-180, 286.3-185, 286.3-820, 12 C.F.R. 208.43, 325

STATUTORY AUTHORITY: KRS 286.1-020, 286.3-180(2), 286.3-185, 286.3-820

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.3-180(2) and 286.3-185 authorize the Department of Financial Institutions to designate those banks that do not have to apply for approval of the commissioner for permission to establish a branch or to relocate their principal office or branch. KRS 286.3-820(2) authorizes the Department of Financial Institutions to designate those banks that do not have to apply for approval of the commissioner to establish a loan production office. KRS 286.3-102 authorizes a qualified state bank to engage in any banking activity in which the bank could engage in other states if the bank meets specified conditions. Other states permit statewide branching as part of their authorized banking activities. This administrative regulation establishes the criteria for a bank to meet in order to be designated as not having to obtain commissioner approval to establish a branch or loan production office, or relocate a principal office or branch, and also clarifies what banking operations may or may not be conducted at a loan production office.

Section 1. Permitted Activities Without Commissioner Approval. Any bank that meets the criteria set forth in Section 2 of this administrative regulation and provides the notices required in Section 3 of this administrative regulation may do any of the following in any county of the state, whether or not already located in the county, without commissioner approval:

(1) Establish a branch;

(2) Establish a loan production office; or

(3) Relocate its main office or branch office.

Section 2. Criteria to Act Without Commissioner Approval. The following criteria shall be satisfied before a bank may undertake the activities described in Section 1 of this administrative regulation without commissioner approval:

(1) The bank shall have received its bank charter at least three (3) years prior to undertaking the activities;

(2) The bank shall be well-capitalized:

(a) As defined in 12 C.F.R. Part 325 by the Federal Deposit Insurance Corporation, if the bank is a nonmember bank; or

(b) As defined in 12 C.F.R. 208.43(b)(1) by the Federal Reserve Board of Governors, if the bank is a member bank of the Federal Reserve System;

(3) The bank shall have received a CAMELS composite rating of one (1) or two (2) on its most recent state or federal regulatory examination;

(4) The bank shall have received a management rating of one (1) or two (2) on its most recent state or federal regulatory examination;

(5) The bank shall not be a party to any formal or informal enforcement action initiated by a state or federal regulatory agency; and

(6) The bank's activity shall not cause the bank to exceed the fixed asset limitation established in KRS 286.3-100.

Section 3. Required Notices. A bank that desires to engage in the activities described in Section 1 of this administrative regulation without commissioner approval shall submit the notices required by this section except that the notice requirement of subsection (2) of this section shall not apply to a bank that desires to establish a loan production office.

(1) A notice shall be sent to the department within thirty (30) days after the bank's board of directors approves the activity. The notice shall provide as follows:

(a) The address of the new location where the bank intends to establish or relocate its new branch, office, or loan production office;

(b) The expected date the new branch, office, or loan production office shall open; and

(c) A statement by the bank that it satisfies the criteria set forth in Section 2 of this administrative regulation signed by an authorized officer or agent of the bank.

(2) A notice shall be sent to any state bank with its main office located in the county where the new branch or office, but not a loan production office, will be located within thirty (30) days after the bank's board of directors approve the activity. The notice shall provide as follows:

(a) The address of the new location where the bank intends to establish or relocate its new branch or office; and

(b) The expected date the new branch or office shall open.

(3) A notice shall be sent to the department within thirty (30) days after the bank has opened its branch, office, or loan production offices, at the new location advising the department of the opening.

Section 4. Effect of Subsequent Noncompliance with Criteria. If, subsequent to the establishment or relocation of an office, branch, or loan production office without commissioner approval, the bank no longer meets the requirements established in Section 2 of this administrative regulation, the bank shall thereafter be required to obtain commissioner approval prior to establishing or relocating any additional offices, branches, or loan production offices until the bank again meets the criteria. The establishment or relocation already completed by the bank shall not be rendered ineffective.

Section 5. A bank's board of directors may by resolution establish maximum dollar limits on the lending authority of officers located at a loan production office, and if the designated limits are consistent with bank wide limits on lending authority, the department will consider loans made by those officers under such limits to be approved at the principal office for the purpose of KRS 286.3-820(1)(a). A loan production office officer may therefore accept a loan application and act upon it without further action by the principal office.

Section 6. A bank may maintain a transaction account at the principal office into which funds representing loan proceeds earmarked for loan production office loans are deposited, and a loan production office officer may draw instruments on that account in order to disburse loan proceeds. The department then will consider funds to have been disbursed at the principal office for purposes of KRS 286.3-820(1)(a) and (b).

Section 7. Loans originated at a loan production office may be closed at that loan production office. No loan payments, whether the loan originated at the loan production office or at a main or branch bank office, or another loan production office may be received at a loan production office.

Section 8. A bank customer may receive information at the loan production office on any lending account which that customer may have with the bank whether or not the loan was originated at that loan production office.

CHARLES A. VICE, Commissioner
K. GAIL RUSSELL, Acting Secretary
APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria required for a bank to establish a branch or loan production office, or relocate a principal office or branch without first obtaining commissioner approval. It further identifies the steps that must be taken by such banks, and clarifies what banking operations may or may not be conducted at a loan production office.

(b) The necessity of this administrative regulation: Through this regulation, the Department provides statutorily authorized guidance regarding those banks that do not have to apply for approval of the commissioner for permission to establish a branch, relocate their principal office or branch, or establish a loan production office. This regulation further identifies the banking operations that may or may not be conducted at a loan production office.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-011 authorizes the Department of Financial Institutions to exercise all administrative functions of the state in relation to the regulation and supervision of banks. KRS 286.1-020 authorizes the commissioner to promulgate any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.3-180(2) and 286.3-185 authorize the department to designate those banks that do not have to apply for approval of the commissioner for permission to establish a branch or to relocate their principal office or branch. KRS 286.3-820(2) authorizes the department to designate those banks that do not have to apply for approval of the commissioner to establish a loan production office. KRS 286.3-102 authorizes a qualified state bank to engage in any banking activity in which the bank could engage in other states if the bank meets specified conditions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide statutorily-directed guidance to regulated entities and the public on requirements and permitted operations of a bank's branch, principal office, or loan production office.

(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: While this regulation, which consolidates and streamlines existing regulations, will continue to impact the 121 state-chartered banks in Kentucky, it will have no material change on any of their regulatory obligations.

(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 consolidating regulation will not require any change or addition to the compliance requirements of any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to benefitting from the increased convenience and efficiencies offered through consolidation, this regulation will retain all the compliance benefits offered by the original regulations.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No additional funding will be required for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-011, 286.1-020, 286.3-102, 286.3-180(2), 286.3-185, and 286.3-820(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This consolidating 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 consolidating 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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
(New Administrative Regulation)

808 KAR 15:040. Multibank Companies.

RELATES TO: KRS 286.3-095, 286.3-905

STATUTORY AUTHORITY: KRS 286.3-020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.3-095 and 286.3-905 set forth the statutory procedures for filing applications by a bank holding company or individual to acquire control of a state-chartered bank or bank holding company which includes a state-chartered bank when either a state-chartered bank or a bank holding company which includes a state-chartered bank is involved in the transaction; the setting of filing and examination fees; and the examination of any holding company that controls a state-chartered bank. This administrative regulation is to insure uniformity in the procedures to be used in the application and examination processes.

Section 1. (1) KRS 286.3-095(1), (2), and KRS 286.3-905 shall not apply to transactions involving applications filed with the Federal Reserve Board for prior approval to become a one-bank holding company.

(2)(a) Applications by a bank holding company to acquire control of a state-chartered bank or to acquire control of a bank holding company which controls a state-chartered bank; and

(b) Applications by a bank holding company which controls a state-chartered bank to acquire control of a national bank or bank holding company which controls a national bank; and

(c) Applications by a bank holding company which controls a state-chartered bank to acquire control of a bank or bank holding company not having its principal place of business in this state; and

(d) Applications by a bank holding company not having its principal place of business in this state to acquire control of a state-chartered bank or bank holding company which includes a state-chartered bank, are subject to KRS 286.3-905.

(3) If a proposed change occurs in the outstanding voting stock of a state-chartered bank subject to KRS 286.3-095 or 286.3-905 and a bank holding company application or change of control notice is required by federal regulatory agencies, the concurrent filing of a copy of the application or notice submitted to the federal regulatory agency with the commissioner shall fulfill the documentation requirement of KRS 286.3-095 or 286.3-905.

(4) The original bank holding company application shall be filed with the commissioner concurrently with the application filed with the Federal Reserve Board and shall be on the same application form used by the Federal Reserve Board. All subsequent information furnished by the applicant to the Federal Reserve Board shall be concurrently filed with the department.

(5) A complete application is which includes all information necessary for the commissioner to make a decision to approve or disapprove the application and has been accepted for processing by the Federal Reserve Board.

Section 2. Filing Fee. Each application shall include a nonrefundable investigation fee of $2,500. The fee assessed by the commissioner shall be paid prior to approval of the application by the commissioner.

Section 3. Examination Fees. If the commissioner examines or elects to participate in a joint examination with the applicable federal regulatory agency of any holding company that controls a state-chartered bank, the examination fee assessed against the company examined shall be based upon fair compensation for time and actual expenses.

Section 4. Publication of Notice. Publication of notice of intention of a bank holding company to acquire control of a state-chartered bank or to acquire control of a bank holding company which controls a state-chartered bank shall be the responsibility of the applicant pursuant to Regulation Y issued by the Federal Reserve Board (12 C.F.R. 225, as revised effective December 28, 2004).

Section 5. Hearings. The department shall not hold hearings on any application or notice. Hearings, if any, shall be conducted by the Federal Reserve Board in accordance with Regulation Y or by the appropriate federal banking agency pursuant to the federal Bank Change in Control Act of 1978, as amended (12 U.S.C. 1817(j)).

Section 6. Nonbank Activities and Acquisitions. Nonbank activities and acquisitions for bank holding companies are regulated by the Federal Reserve Board in accordance with Regulation Y.

Section 7. Coordination with Federal Reserve Board. The commissioner shall coordinate the application process for acquisition of control of state-chartered banks and bank holding companies which control a state-chartered bank with the Federal Reserve Board to ensure that no unreasonable delays occur in the approval process.

CHARLES A. VICE, Commissioner

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 14, 2018

FILED WITH LRC: December 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2019, at 10:00 a.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2019. 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: Joseph P. Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joseph P. Donohue

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 286.3-095 and 286.3-905 provide the statutory procedures for: (a) filing applications by a bank holding company or individual to acquire control of a state-chartered bank or bank holding company which includes a state-chartered bank when either a state-chartered bank

or a bank holding company which includes a state-chartered bank is involved in the transaction; (b) the setting of filing and examination fees; and (c) the examination of any holding company that controls a state-chartered bank. This administrative regulation supplements, clarifies and adds guidance to those statutory procedures and insures uniformity in the procedures to be used in the application and examination processes.

(b) The necessity of this administrative regulation: This regulation promotes compliance by providing licensees with guidance and direction on the oversight and supervision of bank holding companies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-011 authorizes the Department of Financial Institutions to exercise all administrative functions of the state in relation to the regulation and supervision of banks. KRS 286.1-020 authorizes the commissioner to promulgate any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286.KRS 286.3-020 authorizes the commissioner to approve applications for a bank or trust company charter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation supplements, clarifies and adds guidance to the statutory procedures set forth in KRS 286.3-095 and KRS 286.3-905, and insures uniformity in the procedures to be used in the application and examination processes.

(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: In the last five years, 20 licensed institutions have been impacted by the existing regulation that is being replaced and relocated by this substantively similar, newly-promulgated regulation. Many of these licensees will be required to comply with this new 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: While this regulation, which more logically organizes existing regulations, will likely continue to affect many of the 20 licensed institutions that have been impacted by the prior framework, it will have no material change on any of their regulatory obligations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation will not require any change or addition to the compliance requirements of any regulated entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to benefitting from the efficiencies offered through a more logically organized regulatory framework, this regulation will retain all the compliance benefits offered by the original regulation.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No additional funding will be required for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 286.1-011, KRS 286.1-020, and KRS 286.3020.

(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 will be no cost to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the 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 (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(New Administrative Regulation)

922 KAR 1:565. Service array for a relative or fictive kin caregiver.

RELATES TO: KRS 2.015, 45.237-45.241, 156.496, 194A.005(1), 199.011, 199.462, 199.470-199.590, 205.211, Chapter 387, 403.270-403.355, 405.024, 527.100, 527.110, 600.020, 610.110, 620.020(1), 620.090, 620.140, 620.170, 42 U.S.C. 600-619, 671, 673, 675, D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017)

STATUTORY AUTHORITY: KRS 194A.050(1), 605.120(6), 605.130(7), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of

federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) allows the cabinet to promulgate administrative regulations to implement provisions of the chapter, including KRS 605.130(7), which authorizes the cabinet to perform such other services as may be deemed necessary for the protection of children. KRS 605.120(6) requires the cabinet to promulgate administrative regulations governing programming and other relative caregiver and fictive kin services that support a safe, developmentally appropriate, and more permanent placement with a qualified relative or fictive kin for a child who would be place in another out-of-home placement as authorized by KRS 605.120(5). This administrative regulation establishes the service array for a relative or fictive kin caregiver to the extent funds are available.

Section 1. Definitions.

(1) "Absent parent search" means cabinet-initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Child" means a:

(a) Child defined by KRS 199.011(4) and 600.020(9);

(b) Person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the eligibility requirements with the financial resources to find and afford quality child care, as established in 922 KAR 002:160.

(6) "Child who is a candidate for foster care" is defined by 42 U.S.C. 675(13).

(7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(8) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care, as established in 921 KAR 2:006.

(9) "Parent" is defined by 42 U.S.C. 675(2).

(10) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Identification of a Relative.

(1) If a relative or fictive kin placement is in the best interest of a child upon removal from the child's home of origin, the cabinet shall:

(a) Use an absent parent search in accordance with 922 KAR 1:140, Section 3, to locate a relative; or

(b) Discuss a prospective relative or fictive kin placement with the:

1. Child's parent; and

2. Child based upon the age and development of the child.

(2) Cabinet staff shall make reasonable attempts to:

(a) Contact the relative or fictive kin; and

(b) Assess the relative's or fictive kin's appropriateness to serve as a placement resource for the child.

(3) The cabinet shall:

(a) Disclose legal and service options available to a prospective relative or fictive kin:

1. Who is being assessed as a placement resource; and

2. Prior to the time a child is placed in the relative's or fictive kin's home; and

(b) Obtain written acknowledgement of the disclosure of legal and service options from the relative or fictive kin.

Section 3. Fitness of the Relative or Fictive Kin.

(1) To support a child's health, safety, and wellbeing in placement with a relative or fictive kin caregiver, based upon the legal option selected by the relative or fictive kin, the cabinet shall:

(a) Complete a home evaluation with consideration given to the relative's or fictive kin's:

1. Willingness and ability to:

a. Protect the child from abuse or neglect;

b. Participate in the child's case permanency plan;

c. Access:

(i) Transportation;

(ii) Telephone;

(iii) Medical and dental services;

(iv) First aid supplies; and

(v) School;

d. Provide full-time care;

e. Provide for the child's sleeping and eating;

f. Maintain adequate heat and ventilation in the home;

g. Use active smoke detectors in the home; and

h. Assure the child's inaccessibility to:

(i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12), applies;

(ii) Alcoholic beverages;

(iii) Poisonous materials;

(iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;

(v) Unsupervised contact with the birth parent; and

(vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family; and

3. Fitness in accordance with 922 KAR 1:490; or

(b) Conduct a home study and background checks in accordance with 922 KAR 1:350 and 922 KAR 1:490 in consideration of the relative or fictive kin as a prospective foster or adoptive home.

(2) A relative or fictive kin caregiver who seeks approval as a foster or adoptive parent shall meet the training requirements established in 922 KAR 1:495.

(3) The cabinet shall:

(a) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive head trauma in accordance with KRS 199.462; and

(b) Provide information to the relative or fictive kin on how to recognize and report child abuse and neglect.

(4) To the extent funds are available, the cabinet shall make available to a relative or fictive kin caregiver training:

(a) For foster parents, adoptive parents, and respite care providers in accordance with 922 KAR 1:495; and

(b) Developed to address the needs of relative and fictive kin caregivers, including management of the relationship with the child's parent.

(5) A relative's or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

Section 4. Relative Placement Support Benefit.

(1) To the extent that funds are available, the cabinet shall provide a one (1) time relative placement support benefit:

(a) To facilitate the cabinet's placement of a child with a nonparental relative as an alternative to the child's placement in foster care;

(b) If a court of competent jurisdiction has granted temporary custody of the child to the relative or the cabinet due to:

1. Child abuse or neglect by the child's biological or adoptive parent; or

2. The death of both parents;

(c) That will provide for a child's immediate needs, such as:

1. Clothing;

2. School supplies;

3. Additional furniture; or

4. A deposit for a larger apartment; and

(d) That does not exceed the amount for the appropriate number of eligible children as follows:

Number of Eligible Children	Payment Amount
1	$350
2	$700
3	$1,050
4	$1,400
5	$1,750
6 or more	$2,100

(2)(a) The relative placement support benefit shall be issued by check or electronic fund transfer directly to:

1. The relative with whom the child is placed; or

2. A vendor providing the needed service or item listed in subsection (1)(c) of this section.

(b) Before the provision of the relative placement support benefit, the relative or the vendor shall provide tax status and contact information for accounting of the benefit's disbursement.

(3) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

(a) Placed with a relative whose household income is at or below 200 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or

(b) Determined eligible for K-TAP pursuant to 921 KAR 2:006 and 921 KAR 2:016.

(4) A relative shall not be eligible for an initial allowance as a foster parent if the relative receives the relative placement support benefit.

Section 5. Legal Options.

(1) The following legal options shall be available to a prospective relative or fictive kin caregiver:

(a) Family-arranged care through:

1. A prevention plan in accordance with 922 KAR 1:330;

2. An affidavit to make health care treatment and school-related decisions for the child in accordance with KRS 405.024; or

3. A power of attorney for temporary delegation of parental rights and responsibilities in accordance with KRS 403.352 and 403.353;

(b) Court-ordered custody to the relative or fictive kin caregiver in accordance with KRS 403.270-403.355, 620.090, or 620.140(1)(c);

(c) Court-order custody to the cabinet in accordance with KRS 620.090, 620.140(1)(c), or 620.170;

(d) Adoption in accordance with KRS 199.470-199.590 or 922 KAR 1:100; or

(e) Guardianship in accordance with KRS Chapter 387.

(2) Considerations in assessing the legal options for a relative or fictive kin caregiver shall include:

(a) The likelihood of the child's reunification with the child's home of origin, including the child's permanency goal in accordance with 922 KAR 1:140;

(b) The relationship that the relative or fictive kin caregiver has with the child's home of origin or parent;

(c) The ability of the relative or fictive kin caregiver to:

1. Manage parental visitation; and

2. Ensure the child's safety;

(d) The relative or fictive kin caregiver's financial situation and need for additional resources to support the safety, permanency, and wellbeing of the child;

(e) The level of involvement and types of services that will be needed from the cabinet to the caregiver and the child to ensure the safety, permanency, and wellbeing of the child; and

(f) The level of support and types of services that will be needed if:

1. The caregiver assumes legal responsibility for the child; or

2. Reunification with the child's home of origin is not possible for the child.

(3) Permanency services for a child in the custody of the cabinet shall be in accordance with 922 KAR 1:140.

Section 6. Service Options.

(1) The array of monetary supports on behalf of a child placed with a relative or fictive kin caregiver shall include:

(a) The Relative Placement Support Benefit in accordance with Section 4 of this administrative regulation;

(b) CCAP in accordance with 922 KAR 002:160;

(c) Child support if application is made or intergovernmental process applies in accordance with 921 KAR 1:380;

(d) K-TAP if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;

(e) The Kinship Care Program in accordance with 922 KAR 1:130;

(f) Health benefits for the child:

1. In accordance with 907 KAR 20:005; or

2. If application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;

(g) Foster care per diem in accordance with:

1.a. 922 KAR 1:350; or

b. D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017); and

2. The terms and conditions specified in the individual agreement between the cabinet and the foster parent;

(h) Adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060;

(i) To the extent funds are available, post-permanency services, including:

1. Subsidized guardianship under 42 U.S.C. 671 and 673 once the benefit is available; or

2. Post-adoption placement stabilization services in accordance with 922 KAR 1:530; or

(j) The Supplemental Nutrition Assistance Program if application is made in accordance with 922 KAR 3:030.

(2) To the extent funds are available, effective October 1, 2019, the cabinet shall provide prevention and family services and programs in accordance with 42 U.S.C. 671(e) to a child who is a candidate for foster care, including:

(a) Mental health and substance abuse prevention and treatment services; or

(b) In-home parent skill-based programs.

(3) To the extent funds are available, the cabinet or its designee shall provide the following services for a relative or fictive kin caregiver:

(a) A hotline;

(b) Online portal;

(c) Crisis intervention;

(d) Support group;

(e) Advocacy;

(f) Community education; and

(g) Referral to community resource or provider, such as:

1. Family Resource and Youth Service Centers established in accordance with KRS 156.496;

2. The Health Access Nurturing Development Services (HANDS) Program in accordance with 902 KAR 4:120;

3. The Special Supplemental Nutrition Program for Women, Infants, and Children or "WIC program" in accordance with 902 KAR Chapter 18;

4. Kentucky's Early Intervention Program, First Steps, in accordance with 902 KAR Chapter 30;

5. Mental health programming; or

6. Caregiver programming made available through the Department for Aging and Independent Living or its designee.

(4) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 7. Complaint and Service Appeals.

(1) A relative or fictive kin caregiver may submit a service complaint or an appeal concerning a protection and permanency service in accordance with 922 KAR 1:320.

(2) An appeal concerning CCAP shall be in accordance with 921 KAR 2:055, 922 KAR 002:020, or 922 KAR 002:260.

(3) An appeal regarding K-TAP shall be in accordance with 921 KAR 2:055.

(4) An appeal concerning the Supplemental Nutrition Assistance Program shall be in accordance with 921 KAR 3:060 or 921 KAR 3:070.

ERIC T. CLARK, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held January 28, 2019, 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 January 18, 2019, 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 January 31, 2019. 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: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone: (502) 564-3703, email Laura.Begin@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service array for a relative or fictive kin caregiver to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service array for a relative and fictive kin caregiver to the extent funds are available.

(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 service array for a relative or fictive kin caregiver to the extent funds are available.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of a service array for a relative and fictive kin caregiver to the extent resources are available.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services values the use of relative and fictive kin placements for children who cannot remain safely in their homes of origin due to abuse, neglect, or dependency. While the department does not have data on the number of relative and fictive kin placements made over the years, the Annie E. Casey-Child Welfare Strategies Group estimated for every six (6) children who enter foster care, there are ten (10) children who are placed with relatives or fictive kin. As of the October 7, 2018, Statewide Foster Care FACTS, there were 1,084 children in the cabinet's custody who were placed with relative or fictive kin. As of early October 2018, 1,357 relatives or fictive kin caregivers have been notified of their qualification for foster care per diem under the *D.O. v. Glisson* ruling.

(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. This administrative regulation establishes the service array for relative or fictive kin caregivers from which they can select the legal arrangements of the child's placement and services provided through this department.

(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 new cost associating with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the establishment of legal and service options from which the relative or fictive kin caregiver can select based upon their preferences, unique circumstances, and the needs of the child. The administrative regulation has been informed by stakeholder engagement, review of other states' policies and practices, and national expertise and consultation from the Annie E. Casey Foundation-Child Welfare Strategy Group and Casey Family Programs.

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

(a) Initially: The department anticipates an $18 million impact from benefit payments resulting from the *D.O. v. Glisson*, 847 F.3d 374 (6th Cir. 2017), *cert. denied,* 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017) in State Fiscal Year 2019. Other service provision will be made within available funding. The department was awarded Kinship Navigator funding totally over $210,000 to support staff training and an online portal for relative and fictive kin caregivers in Federal Fiscal Year 2018.

(b) On a continuing basis: New programming, such as the subsidized guardianship option under Title IV-E of the Social Security Act; programmatic expansion; and program growth may necessitate additional budget request(s) in future years. Additional funding opportunities in support of services to relative and fictive kin caregivers have also been made available through Title IV-E of the Social Security Act, as amended by the Family First Prevention Services Act of 2018 (Pub.L. 115-123).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding for this administrative regulation include federal funds from the Temporary Assistance for Needy Families Block grant, the Social Services Block Grant, Title IV-E of the Social Security Act; agency or restricted funds derived from Medicaid; and state funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not establish any fees. The department does not anticipate any increase in funding at this time, though new programming, programmatic expansion, and program growth may necessitate additional budget requests in future years.

(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. 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. 600-619, 671, 673, 675

2. State compliance standards. KRS 194A.050(1), 605.120(6), 605.130(7), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 600-619, 671, 673, 675

4. Will this administrative regulation impose stricter

requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will 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 and government-supported programming for relative and fictive kin caregivers 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), 605.120(6), 605.130(7), 605.150(1), 42 U.S.C. 600-619, 671, 673, 675

(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 is not anticipated to generate any revenues, though it may help the state qualify for additional federal reimbursement in support of state programming.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not anticipated to generate any revenues, though it may help qualify the state for additional federal reimbursement in support of stat programming.

(c) How much will it cost to administer this program for the first year? The department anticipates an $18 million impact in benefit issuances resulting from the *D.O. v. Glisson*, 847 F.3d 374 (6th Cir. 2017), *cert. denied,* 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017) in State Fiscal Year 2019. Other service provision will be made within available funding. The department was awarded Kinship Navigator funding totally over $210,000 to support staff training and online portal for relative and fictive kin caregivers in Federal Fiscal Year 2018.

(d) How much will it cost to administer this program for subsequent years? New programming, such as the subsidized guardianship option under Title IV-E of the Social Security Act; programmatic expansion; and program growth may necessitate additional budget request(s) in future years. Additional funding opportunities in support of services to relative and fictive kin caregivers have also been made available through Title IV-E of the Social Security Act, as amended by the Family First Prevention Services Act of 2018 (Pub.L. 115-123).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 11, 2018

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 11, 2018, at 1:00 p.m. In Room 171 of the Capitol Annex. Representative Hale Co-Chair, called the meeting to order, the roll call was taken. The minutes of the November 2018 meeting were approved.

Present were:
Members: Senators Ernie Harris and Julie Raque Adams; and Representatives David Hale, 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 Steffen Registry of Election Finance; Gary Morris, Todd Renner, Department of Revenue; Joseph Bowman, Alan Hurst, Kentucky Retirement Systems; Keith Poynter, Board of Chiropractic Examiners; Tony Cotto, Board of Psychology; Jared Downs, Stacy Grider, Board of Licensure for Occupational Therapy; Steve Beam, Eric Gibson, Gabe Jenkins, Evan Jones, Karen Waldrop, Department of Fish and Wildlife Resources; Melissa Duff, Department for Environmental Protection; Julie Foster, Justice and Public Safety Cabinet; Ann Dangelo, Steve Drake, Department of Transportation; Todd Allen, Department of Education; Estee Jackson, Lisa King, Olivia Orrender, Workers' Compensation Funding Commission; Steve Humphress, Marc Manley, Department of Alcoholic Beverage Control; Michael Mullins, Jim Vicini, Department for Natural Resources; Julie Brooks, Jenny Glass, Mike Tuggle, Department for Public Health; Jonathan Scott, Department for Medicaid Services; Laura Begin, Christa Bell, Elizabeth Caywood, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, December 11, 2018, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

DEPARTMENT OF STATE: Kentucky Registry of Election Finance: Electronic Voting Systems

032 KAR 001:030 & E. Election finance statement forms; campaign contributions or expenditures in excess of $3,000. John Steffen, executive director, represented the registry.

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.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration

103 KAR 001:040. Waiver of penalties. Gary Morris, executive advisor, and Todd Renner, executive director, represented the department.

In response to a question by Co-Chair Harris, Mr. Morris and Mr. Renner stated that changes to these administrative regulations were for compliance with federal and state legislative updates.

103 KAR 001:130. Taxation of federal and certain nonfederal obligations.

Income Tax; Corporations

103 KAR 016:060. Income classification; apportionable and nonapportionable.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 016:090. Apportionment; payroll factor.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 016:230. Intangible expenses, intangible interest expense, and management fees.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) establish a definition for "arm's length transaction;" and (2) comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 016:240. Nexus standard for corporations and pass-through entities.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 016:290. Apportionment; property factor.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 016:330. Apportionment and allocation; alternative apportionment; separate accounting.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to clarify that this administrative regulation shall apply to taxable years beginning on or after January 1, 2018. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 016:340. Completed contract method.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to establish a definition for "gross contract price." Without objection, and with agreement of the agency, the amendments were approved.

Income Tax; Miscellaneous

103 KAR 019:010. Computation of income; estates and trusts.

In response to a question by Co-Chair Harris, Mr. Renner stated that this administrative regulation had not been amended since 1975.

A motion was made and seconded to approve the following

amendments: to amend the RELATES TO paragraph and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Retirement Systems: General Rules

105 KAR 001:145. Voluntary cessation of participation by employers. Joseph Bowman, assistant general counsel, and Alan Hurst, staff attorney, represented the systems.

In response to questions by Co-Chair Harris, Mr. Hurst stated that the employer was responsible for paying fees associated with litigation, which was in accordance with the systems' broad statutory authority. Mr. Bowman stated that KRS 61.522, Section 9, provided that an employer that voluntarily ceased participation in the systems, or was required to voluntarily cease participation, shall hold the Commonwealth harmless from damages, attorneys' fees, and costs of legal claims for any cause of action brought.

In response to a question by Senator Raque Adams, Mr. Bowman stated that these requirements were not retroactive.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4, 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.

105 KAR 001:147 & E. Involuntary cessation of participating employers.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Chiropractic Examiners

201 KAR 021:015. Code of ethical conduct and standards of practice. Keith Poynter, general counsel, represented the board.

201 KAR 021:045. Specialties.

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: (a) establish examples of specialties certified; and (b) reference the board's Web site, where a complete listing of approved and certified specialties is maintained. Without objection, and with agreement of the agency, the amendments were approved.

Board of Examiners of Psychology

201 KAR 026:130. Grievances and administrative complaints. Tony Cotto, executive advisor, represented the board.

In response to questions by Co-Chair Harris, Mr. Cotto stated that this administrative regulation, in concert with 201 KAR 26:140, established disciplinary provisions with the intent to encourage use of the KRS Chapter 13B due process requirements. The grievance process was an intermediate step prior to commencing the formal complaint process.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 026:140. Procedures for disciplinary hearings.

A motion was made and seconded to approve the following amendments: to amend 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.

201 KAR 026:171. Requirements for supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 15 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 026:175. Continuing education.

201 KAR 026:200. Education requirements.

201 KAR 026:211. Repeal of 201 KAR 026:210.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 026:280. Licensed psychological associate: application procedures and temporary license.

In response to a question by Co-Chair Harris, Mr. Cotto stated that requirements pertaining to specific passing scores were deleted and replaced with the general concept of a passing score.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure of Occupational Therapy

201 KAR 028:021. Repeal of 201 KAR 028:020, 201 KAR 028:090, 201 KAR 028:110, 201 KAR 028:180, and 201 KAR 028:210. Jared Downs, counsel, and Stacy Grider, chair, represented the board.

201 KAR 028:060. Licensure, renewals, and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Sections 1 through 3 to clarify examination requirements; and (3) to amend Section 8 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 028:170. Deep physical agent modalities.

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

301 KAR 002:095. Importation of cervid carcasses and parts. Gabe Jenkins, deer and elk coordinator; Evan Jones, assistant general counsel; and Karen Waldrop, deputy commissioner, represented the department.

In response to questions by Co-Chair Hale regarding concerns from the Kentucky Taxidermist Association, Ms. Waldrop stated that this administrative regulation was necessary to protect Kentucky cervids from Chronic Wasting Disease, which was communicable and caused by an abnormal prion in certain cervid species. Chronic Wasting Disease was a neurological illness, which caused death in any infected cervid. This administrative regulation prohibited bringing into Kentucky from any other state, neurological tissue (brain and spinal cord) from any harvested cervid. Sixteen (16) states had similar prohibitions. Waiting for a state to test positive as a Chronic Wasting Disease state before prohibiting the entrance of harvested cervid neurological tissue, because the testing takes time, could be insufficient for protecting Kentucky. Wildlife officers worked closely with taxidermists and processors to ensure that harvested cervid neurological tissue was not brought into Kentucky. Additionally, wildlife officers watched for harvested cervids brought in by vehicle. Indiana was the only state from which Kentucky authorized importation of live cervids.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND

CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:132. Elk hunting seasons, permits, zones, and requirements.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: Permits, Registrations, and Prohibitory Rules

401 KAR 052:050. Permit application forms. Melissa Duff, director, represented the division.

In response to a question by Co-Chair Harris, Ms. Duff stated that these administrative regulations did not lessen the stringency of requirements in terms of source registration. The amendments clarified if a permit or a registration was required.

401 KAR 052:070. Registration of air contaminant sources.

A motion was made and seconded to approve the following amendments: to amend 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: **Special Local Peace Officers**

500 KAR 003:020. Filing and processing SLPO commissions. Julie Foster, staff attorney, represented the cabinet.

In response to a question by Co-Chair Harris, Ms. Foster stated that special local peace officers were employed at facilities such as the Ark Encounter, churches, and synagogues.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 6, and 8 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Highways: Division of Planning: Traffic

603 KAR 005:070. Motor vehicle dimension limits. Ann D'Angelo, assistant general counsel, and Steven Drake, engineering technician III, represented the division.

In response to a question by Co-Chair Harris, Ms. D'Angelo stated that the amendments to this administrative regulation were for compliance with federal updates.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for "length exclusion safety device;" and (2) to amend Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Academic Standards

704 KAR 008:010. Kentucky Academic Standards for Computer Science Elective. Todd Allen, deputy general counsel; Christa Hall, director, Division of Program Standards; and Scott U'Sellis, academic program manager, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

704 KAR 008:030. Kentucky Academic Standards for Health.

704 KAR 008:050. Kentucky Academic Standards for Physical Education.

LABOR CABINET: Workers' Compensation Funding Commission: Collective Bargaining and Arbitration

803 KAR 030:010. Special fund assessments. Estee Jackson, administrative services officer; Lisa King, director of auditing; and Olivia Orrender, audit review manager, represented the commission.

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 3, 5 through 7, and 9 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 030:021. Repeal of 803 KAR 030:020.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 004:011. Repeal of 804 KAR 004:010. Steve Humphress, general counsel, and Marc Manley, counsel, represented the department.

Mr. Humphress thanked Co-Chair Harris for his service and leadership during his tenure with the subcommittee.

ENERGY AND ENVIRONMENT CABINET: Department of Natural Resources: Division of Mine Safety: Mining Safety Standards

805 KAR 003:100. Equipment use and operation. Michael Mullins, regulation coordinator, and Jim Vicini, director, represented the division.

In response to a question by Co-Chair Harris, Mr. Vicini stated that the effective date for these requirements was being extended because these requirements were more stringent than the federal program and the industry was unable at this time to comply. The extension would give the division more time to work with stakeholders to develop feasibility.

A motion was made and seconded to approve the following amendments: to amend Section 1 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: Department of Public Health: Division of Administration and Financial Management: Local Health Departments

902 KAR 008:165. Local health department accounting and auditing requirements. Julie Brooks, regulation coordinator; Jenny Glass, branch manager; and Mike Tuggle, assistant director for administration and financial management, represented the division.

902 KAR 008:170. Local health department financial management requirements.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Program Integrity: Medicaid Services

907 KAR 001:005. Nonduplication of payments. Jonathan Scott, regulatory advisor, represented the department.

907 KAR 001:075. Hearings and appeals for individuals with intellectual disability.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 001:060. Federal Title IV-E adoption assistance. Laura Begin, regulation coordinator; Christa Bell, director; and Elizabeth Caywood, deputy commissioner, represented the division.

922 KAR 001:360 & E. Private child care placement, levels of care, and payment.

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, 2, 5, 9 through 13, and 16 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Staff read a resolution adjourning the subcommittee in honor of Co-Chair Harris upon his departure from the subcommittee. A motion was made and seconded to approve the resolution. Without objection, the resolution was approved.

Co-Chair Harris stated that serving on this subcommittee had given him the best education of any committee regarding the various functions of state government. His goal had been to work with governmental agencies and stakeholders to develop administrative regulations that best served communities for the benefit of all Kentuckians. He thanked subcommittee members and staff.

The following administrative regulations were deferred or removed from the December 11, 2018, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:370. Pharmacy services in long-term care facility (LTCF).

Board of Social Work

201 KAR 023:150. Complaint procedure, disciplinary action, and reconsideration.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Hazardous Waste

401 KAR 039:060. General requirements.

401 KAR 039:080. Hazardous waste handlers.

401 KAR 039:090. Hazardous waste permit program.

Enforcement and Compliance Monitoring

401 KAR 040:051. Repeal of 401 KAR 040:050.

Underground Storage Tanks

401 KAR 042:005. Definitions for 401 KAR Chapter 042.

401 KAR 042:020. UST system requirements, notification, registration, and annual fees.

401 KAR 042:060. UST system release and corrective action requirements.

401 KAR 042:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement.

401 KAR 042:330. Small Owners Tank Removal Account.

401 KAR 042:341. Repeal of 401 KAR 042:011, 042:030, 042:040, 042:045, 042:050, 042:070, 042:080, 042:090, 042:095, 042:200, 042:290, 042:300, 042:316, 042:320, 042:335, and 042:340.

JUSTICE AND PUBLIC SAFETY CABINET: Special Law Enforcement Officers

500 KAR 002:030. Special law enforcement officers: evaluation examination.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 002:030 & E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 005:150. Nontraditional Instruction Program.

Office of Learning Programs Development: Office of Instruction

704 KAR 003:292. Education of migratory children.

704 KAR 003:303. Required academic standards.

704 KAR 003:305. Minimum requirements for high school graduation.

704 KAR 003:365. Complaint procedures for programs under the Elementary and Secondary Education act of 1965.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Academic Standards

704 KAR 008:020. Kentucky Academic Standards for Reading and Writing.

704 KAR 008:040. Kentucky Academic Standards for Mathematics.

PUBLIC PROTECTION CABINET: Department of Insurance: Administration

806 KAR 002:092. Disclosure of local government taxes and collection fee.

806 KAR 002:100. Disclosure of insurance premium surcharge.

806 KAR 002:121. Repeal of 806 KAR 002:120 and 806 KAR 002:150.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 005:011. Repeal of 806 KAR 005:010 and 806 KAR 005:020.

Real Estate Authority: Board of Home Inspectors

815 KAR 006:001. Definitions for 815 KAR Chapter 6.

815 KAR 006:010. Licensing requirements.

815 KAR 006:030. Standards of conduct, complaints, and discipline.

815 KAR 006:040. Education requirements and providers.

815 KAR 006:101. Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Long-term Care

900 KAR 002:021. Repeal of 900 KAR 002:020.

900 KAR 002:040. Citations and violations; criteria and specific acts.

Office of Inspector General: Division of Certificate of Need: Certificate of Need

900 KAR 006:075 & E. Certificate of need nonsubstantive review.

Department for Public Health: Food and Cosmetics

902 KAR 045:005. Kentucky food code.

902 KAR 045:007. Repeal of 902 KAR 045:006 and 902 KAR 045:140.

902 KAR 045:090. Home-based processors and farmers market home-based microprocessors.

Department for Medicaid Services: Division of Policy and Operations: Occupational, Physical, and Speech Therapy

907 KAR 008:040. Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 001:010. Independent non-relative adoptions.

922 KAR 001:050. State funded adoption assistance.

922 KAR 001:100 & E. Public agency adoptions.

922 KAR 001:530. Post-adoption placement stabilization services.

The subcommittee adjourned at 2 p.m. The next meeting of the subcommittee is tentatively scheduled for January 9, 2019, at 10 a.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE HEALTH AND WELFARE AND FAMILY SERVICES
Meeting of December 12, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare and Family Services for its meeting of December 12, 2018, having been referred to the Committee on December 5, 2018, pursuant to KRS 13A.290(6):

201 KAR 009:260
900 KAR 005:020
900 KAR 006:020
900 KAR 011:010
902 KAR 020:300
902 KAR 100:018
902 KAR 100:022
902 KAR 100:052
902 KAR 100:070
902 KAR 100:072
902 KAR 100:100
902 KAR 100:142
921 KAR 003:025
921 KAR 003:035
922 KAR 001:411
922 KAR 001:560

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 12, 2018 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **G - 2**

The Locator Index lists all administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky* from July 2018 through June 2019.It also lists the page number on which each regulations listed under VOLUME 44 are those administrative regulations that were originally published in VOLUME 44 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2018 Kentucky Administrative Regulations Service* was published.

KRS Index **G - 16**

The KRS Index is a cross-reference of statutes to which administrative regulations relate.These statute numbers are derive

Certifications Index **G - 32**

The Certification Index lists of administrative regulations that have had certification letters filed during this VOLUME year. The certification process is established in KRS 13A.3104. If the certification letter states the administrative regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

Technical Amendment Index **G - 43**

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2018 *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).Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index **G - 44**

The Subject Index is a general index of administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

Regulation Number	44 Ky.R. Page No.	Effective Date

VOLUME 44

The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
‡ 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.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

201 KAR 012:082E	2303	4-13-2018
Replaced	2364	8-6-2018
201 KAR 022:020E	2180	3-14-2018
Replaced	2486	6-20-2018
201 KAR 022:040E	2182	3-14-2018
Replaced	2487	6-20-2018
201 KAR 022:070E	2184	3-14-2018
Replaced	2487	6-20-2018
921 KAR 2:015E	1799	12-28-2017
Replaced	1899	6-20-2018
922 KAR 002:090E	1916	2-14-2018
Replaced	2513	7-18-2018
922 KAR 002:100E	1925	2-14-2018
Replaced	2522	7-18-2018
922 KAR 002:111E	1936	2-14-2018
Expires		8-13-2018
922 KAR 002:120E	1937	2-14-2018
Replaced	2533	7-18-2018
922 KAR 002:171E*(r)*	2306	4-13-2018
Expires	2308	10-10-2018
922 KAR 002:180E	1946	2-14-2018
Replaced	2138	7-18-2018
922 KAR 002:190E	1952	2-14-2018
Replaced	2144	7-18-2018
922 KAR 002:270E	2308	4-13-2018
Replaced	2459	7-18-2018

ORDINARY ADMINISTRATIVE REGULATIONS:

13 KAR 3:060	2702	8-31-2018
16 KAR 2:010		
Amended	1584	
Am Comments	2033	See 44 Ky.R.
16 KAR 5:030		
Amended	1589	
Am Comments	2039	See 44 Ky.R.
101 KAR 1:325		
Amended	2542	8-31-2018
103 KAR 16:360		
Amended	1094	
Withdrawn by agency		12-8-2017
103 KAR 26:120		
As Amended	1494	2-2-2018
103 KAR 41:120		
Amended	1112	
Withdrawn by agency		12-8-2017
201 KAR 3:005		
Repealed	2703	8-31-2018
201 KAR 3:006(r)	2703	8-31-2018
201 KAR 3:025		
Repealed	2703	8-31-2018
201 KAR 3:035		
Repealed	2703	8-31-2018
201 KAR 3:045		
Amended	2544	See 45 Ky.R.
201 KAR 3:055		
Repealed	2703	8-31-2018
201 KAR 3:065		
Repealed	2703	8-31-2018
201 KAR 3:090		
Amended	2546	8-24-2018
201 KAR 3:100	2705	8-31-2018
201 KAR 5:090		
Amended	2548	See 45 Ky.R.
201 KAR 5:130		
Amended	2549	8-31-2018
201 KAR 6:020		
Amended	2552	8-31-2018
201 KAR 6:050		
Amended	2554	See 45 Ky.R.
201 KAR 009:021		
Amended	2361	7-18-2018
201 KAR 009:031		
Amended	2363	
As Amended		See 45 Ky.R.
201 KAR 009:310		
Amended	1871	5-4-2018
201 KAR 009:480	1725	
As Amended	1970	3-15-2018
201 KAR 012:010		
Amended	2556	See 45 Ky.R.
201 KAR 012:030		
Amended	2557	See 45 Ky.R.
201 KAR 012:082		
Amended	2364	
As Amended		See 45 Ky.R.
201 KAR 012:140		
Amended	2561	See 44 Ky.R.
201 KAR 012:190		
Amended	2563	See 44 Ky.R.
201 KAR 012:230		
Amended	2565	See 44 Ky.R.
201 KAR 012:260		
Amended	2368	
As Amended		See 45 Ky.R.
201 KAR 14:180		
Amended	2566	8-24-2018
201 KAR 20:056		
Amended	2237	
As Amended	2473	6-20-2018
201 KAR 20:070		
Amended	2239	
As Amended	2475	6-20-2018
201 KAR 20:110		
Amended	2241	
As Amended	2476	6-20-2018
201 KAR 20:225		

Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	2244	
As Amended	2477	6-20-2018
201 KAR 20:370		
Amended	2246	
As Amended	2478	6-20-2018
201 KAR 20:411		
Amended	2247	
As Amended	2479	6-20-2018
201 KAR 20:470		
Amended	2250	
As Amended	2481	6-20-2018
201 KAR 022:020		
Amended	2255	
As Amended	2486	6-20-2018
201 KAR 022:040		
Amended	2257	
As Amended	2487	6-20-2018
201 KAR 022:070		
Amended	2259	
As Amended	2487	6-20-2018
201 KAR 25:090		
Amended	1623	
Withdrawn by agency		10-26-2018
201 KAR 34:060		
Amended	2568	See 44 Ky.R.
201 KAR 41:100		
Amended	2572	See 44 Ky.R.
301 KAR 1:130		
Amended	2574	8-6-2018
301 KAR 2:049		
Amended	2260	
As Amended	2488	6-7-2018
301 KAR 2:172		
Amended	2370	
As Amended		See 45 Ky.R.
301 KAR 2:176		
Amended	2576	10-5-2018
301 KAR 2:221		
Amended	2374	
As Amended		See 45 Ky.R.
301 KAR 2:222		
Amended	2376	
As Amended		See 45 Ky.R.
301 KAR 2:228		
Amended	2380	See 44 Ky.R.
302 KAR 16:020		
Amended	2265	
As Amended	2492	7-6-2018
302 KAR 16:081*(r)*	2283	7-6-2018
302 KAR 16:091		
Amended	2267	
As Amended	2493	7-6-2018
302 KAR 50:050	1768	
Amended	2383	7-24-2018
401 KAR 005:002		
Amended	2578	See 45 Ky.R.
401 KAR 005:005		
Amended	2585	See 45 Ky.R.
401 KAR 005:006		
Amended	2598	See 45 Ky.R.
401 KAR 005:015		
Amended	2602	See 45 Ky.R.
401 KAR 005:039		
Repealed	2707	11-1-2018
401 KAR 005:035		
Amended	2604	See 45 Ky.R.
401 KAR 005:039(r)	2707	11-1-2018
401 KAR 005:045		
Amended	2610	See 45 Ky.R.
401 KAR 005:050		
Amended	2612	11-1-2018
401 KAR 005:052		
Amended	2615	11-1-2018
401 KAR 005:055		
Amended	2616	See 45 Ky.R.
401 KAR 005:057		
Repealed	2707	11-1-2018
401 KAR 005:060		
Amended	2620	11-1-2018
401 KAR 005:065		
Amended	2623	11-1-2018
401 KAR 005:070		
Repealed	2707	11-1-2018
401 KAR 005:075		
Amended	2625	See 45 Ky.R.
401 KAR 005:080		
Amended	2628	11-1-2018
401 KAR 005:300		
Repealed	2707	11-1-2018
401 KAR 005:320		
Amended	2631	See 45 Ky.R.
401 KAR 51:240	2284	
AmComments	2505	
401 KAR 51:250	2286	
AmComments	2507	
401 KAR 51:260	2288	
AmComments	2509	
405 KAR 1:005		
Repealed	2708	10-5-2018
405 KAR 1:007		
Repealed	2708	10-5-2018
405 KAR 1:010		
Repealed	2708	10-5-2018
405 KAR 1:011(r)	2708	10-5-2018
405 KAR 1:015		
Repealed	2708	10-5-2018
405 KAR 1:020		
Repealed	2708	10-5-2018
405 KAR 1:030		
Repealed	2708	10-5-2018
405 KAR 1:040		
Repealed	2708	10-5-2018
405 KAR 1:050		
Repealed	2708	10-5-2018
405 KAR 1:051		
Repealed	2708	10-5-2018
405 KAR 1:060		
Repealed	2708	10-5-2018
405 KAR 1:070		
Repealed	2708	10-5-2018
405 KAR 1:080		
Repealed	2708	10-5-2018
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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131.175	103 KAR 001:040
131.180	103 KAR 001:040
131.183	103 KAR 015:041
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131.440	103 KAR 001:040
133.180	103 KAR 001:040
133.220	103 KAR 001:040
134.580	103 KAR 015:041
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141.190	103 KAR 019:010
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141.305	103 KAR 015:060
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141.310	103 KAR 018:110
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141.315	103 KAR 018:081
141.330	103 KAR 018:050
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141.335	103 KAR 018:050
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146.260	400 KAR 004:110
146.270	400 KAR 004:110
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146.280	400 KAR 004:140
146.290	400 KAR 004:110
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146.310	400 KAR 004:110
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146.350	400 KAR 004:110
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146.430	400 KAR 002:070
146.440	400 KAR 002:080
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146.450	400 KAR 001:001
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146.460	400 KAR 002:060
146.465	400 KAR 002:100
146.470	400 KAR 002:080
146.480	400 KAR 002:100
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146.490	400 KAR 002:060
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	400 KAR 001:040
	400 KAR 001:090
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	400 KAR 001:040
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164.7894	011 KAR 004:080
165A	815 KAR 006:040
176.090-176.110	603 KAR 002:015
176.130-176-220	603 KAR 002:015
186.010	601 KAR 002:030
186.440	601 KAR 002:030
186.442	601 KAR 002:030
186.480	601 KAR 002:030
186.531	601 KAR 002:030
186.560	601 KAR 002:030
186.570	601 KAR 002:030
186.655	603 KAR 005:070
189.222	603 KAR 005:070
189A.005	601 KAR 002:030
189A.010	601 KAR 002:030
189A.040	601 KAR 002:030
189A.070	601 KAR 002:030
189A.085	601 KAR 002:030
189A.090	601 KAR 002:030
189A.103	601 KAR 002:030
189A.105	601 KAR 002:030
189A.107	601 KAR 002:030
189A.200	601 KAR 002:030
189A.240	601 KAR 002:030
189A.250	601 KAR 002:030
189A.340	601 KAR 002:030
189A.345	601 KAR 002:030
189A.400	601 KAR 002:030
189A.410	601 KAR 002:030
189A.420	601 KAR 002:030
189A.440	601 KAR 002:030
189A.500	601 KAR 002:030
194A.005	902 KAR 100:022
	902 KAR 100:070
	902 KAR 100:142
	922 KAR 001:140
	922 KAR 001:400
	922 KAR 001:565
194A.025	907 KAR 001:563
194A.030	900 KAR 009:010
194A.050	922 KAR 001:400
	922 KAR 001:565
194A.060	910 KAR 001:240
	922 KAR 001:100
	922 KAR 001:560
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194A.700-729	501 KAR 006:020
	910 KAR 001:240
197	501 KAR 006:020
198B.010	815 KAR 007:070
198B.040	815 KAR 007:070
198B.050	815 KAR 007:070
	815 KAR 035:020
198B.060	815 KAR 007:070
	815 KAR 035:015
198B.090	815 KAR 002:010
	815 KAR 002:020
	815 KAR 007:070
	815 KAR 035:015
198B.095	815 KAR 002:010
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	815 KAR 007:070
198B.260	902 KAR 020:260
198B.4003	815 KAR 004:030
198B.4009	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
	815 KAR 004:071
198B.4011	815 KAR 002:010
	815 KAR 004:030
198B.4013	815 KAR 002:010
	815 KAR 004:030
198B.4023	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
198B.4025	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
198B.4027	815 KAR 004:030
198B.4033	815 KAR 004:030
198B.4037	815 KAR 002:040
198B.615	815 KAR 002:040
198B.6405	815 KAR 002:010
198B.6409	815 KAR 002:010
	815 KAR 002:020
	815 KAR 022:011
	815 KAR 025:081
198B.645	815 KAR 002:010
198B.650	815 KAR 008:010
198B.654	815 KAR 002:010
	815 KAR 002:020
	815 KAR 008:010
	815 KAR 008:091
198B.656	815 KAR 008:010
	815 KAR 008:030
198B.658	815 KAR 002:010
	815 KAR 008:010
	815 KAR 008:030
	815 KAR 008:091
198B.659	815 KAR 008:010
198B.6504	815 KAR 002:020
198B.660	815 KAR 002:010
	815 KAR 008:010
	815 KAR 008:030
198B.662	815 KAR 008:030
198B.664	815 KAR 002:010
	815 KAR 002:020
	815 KAR 008:010
	815 KAR 008:030
198B.668	815 KAR 008:010
198B.670	815 KAR 002:030
198B.672	815 KAR 002:010
	815 KAR 008:010
198B.676	815 KAR 002:040
	815 KAR 008:010
198B.684	815 KAR 002:020
198B.700	815 KAR 006:001
	815 KAR 006:010
198B.706	815 KAR 006:001
	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
	815 KAR 006:101
198B.712	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
198B.714	815 KAR 006:010
198B.716	815 KAR 006:010
198B.722	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
198B.724	815 KAR 006:010
	815 KAR 006:040
198B.728	815 KAR 006:030
198B.730	815 KAR 006:030

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198B.738	815 KAR 006:010
199.011	922 KAR 001:010
	922 KAR 001:100
	922 KAR 001:140
	922 KAR 001:305
	922 KAR 001:360
	922 KAR 001:400
	922 KAR 001:530
	922 KAR 001:560
	922 KAR 001:565
199.430	922 KAR 001:100
199.462	922 KAR 001:140
	922 KAR 001:565
199.467	922 KAR 001:140
199.470	922 KAR 001:010
199.470-199.590	922 KAR 001:565
199.473	922 KAR 001:010
199.474	922 KAR 001:010
199.480	922 KAR 001:010
	922 KAR 001:560
199.490	922 KAR 001:010
199.492	922 KAR 001:010
199.493	922 KAR 001:010
199.500	922 KAR 001:010
	922 KAR 001:060
199.502	922 KAR 001:060
199.505	922 KAR 001:560
199.510	922 KAR 001:010
199.520	922 KAR 001:010
	922 KAR 001:100
199.525	922 KAR 001:100
199.540	922 KAR 001:010
199.555	101 KAR 003:045
	922 KAR 001:050
	922 KAR 001:060
	922 KAR 001:140
199.557	922 KAR 001:060
	922 KAR 001:140
199.570	922 KAR 001:010
	922 KAR 001:100
199.572	922 KAR 001:010
	922 KAR 001:100
199.575	922 KAR 001:100
199.590	922 KAR 001:010
199.640	922 KAR 001:305
199.670	922 KAR 001:305
199.640 - 199.680	922 KAR 001:360
199.801	922 KAR 001:360
	922 KAR 001:140
199.892	921 KAR 002:055
	922 KAR 002:160
199.894	922 KAR 002:160
199.8943	704 KAR 003:015
199.896	922 KAR 002:160
199.898	922 KAR 002:160
199.8982	922 KAR 002:160
199.899	922 KAR 002:160
199.8994	922 KAR 002:160
199.990	922 KAR 001:010
199.640	922 KAR 001:305
	922 KAR 001:560
200.080 - 200.120	505 KAR 001:100
	505 KAR 001:110
	505 KAR 001:180
	505 KAR 001:190
200.575	922 KAR 001:411
202B.010	922 KAR 001:100
205.175	907 KAR 001:075
205.200	922 KAR 001:400
205.211	921 KAR 002:055
	922 KAR 001:565
205.231	907 KAR 001:075
	907 KAR 001:560
	907 KAR 001:563

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	921 KAR 002:055
	921 KAR 003:060
	921 KAR 003:070
205.237	907 KAR 001:075
	907 KAR 001:560
	907 KAR 001:563
	921 KAR 002:055
205.455	910 KAR 001:090
205.520	895 KAR 001:001
	895 KAR 001:010
	895 KAR 001:015
	895 KAR 001:020
	895 KAR 001:025
	895 KAR 001:030
	895 KAR 001:035
	895 KAR 001:040
	895 KAR 001:045
	895 KAR 001:050
	895 KAR 001:055
	907 KAR 001:005
	907 KAR 001:121
	907 KAR 001:270
	907 KAR 001:280
	907 KAR 001:360
	907 KAR 001:560
	907 KAR 001:563
	907 KAR 008:040
205.531	907 KAR 001:560
205.560	907 KAR 001:121
	907 KAR 001:270
	907 KAR 001:280
	907 KAR 001:360
205.565	907 KAR 010:820
205.622	895 KAR 001:035
	907 KAR 008:040
205.637	907 KAR 010:820
205.639	907 KAR 010:820
	922 KAR 001:050
205.640	907 KAR 010:820
205.641	907 KAR 010:820
205.703	922 KAR 001:400
205.705	921 KAR 001:380
205.712	601 KAR 002:030
205.710 - 205.800	921 KAR 001:380
205.900 - 205.925	910 KAR 001:090
205.992	921 KAR 001:380
205.2005	921 KAR 003:025
205.6328	900 KAR 001:091
205.8451	895 KAR 001:001
	907 KAR 001:563
209A.020	922 KAR 001:400
209.020	922 KAR 001:400
209.030	902 KAR 020:300
	910 KAR 001:240
209.032	902 KAR 020:300
209.130	922 KAR 001:400
210.270	907 KAR 001:075
	907 KAR 001:563
210.366	201 KAR 026:175
211.025	902 KAR 010:051
211.090	902 KAR 010:051
	902 KAR 047:071
211.180	902 KAR 008:165
	902 KAR 008:170
	902 KAR 010:051
	902 KAR 047:071
	902 KAR 100:022
	902 KAR 100:070
	902 KAR 100:100
	902 KAR 100:142
211.350	815 KAR 035:015
	815 KAR 035:020
211.461	907 KAR 001:560
211.466	907 KAR 001:560

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	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
211.990	902 KAR 100:018
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
212.025	902 KAR 008:170
212.120	902 KAR 008:170
212.230	902 KAR 008:165
212.240	902 KAR 008:165
212.245	902 KAR 008:165
	902 KAR 008:170
212.890	902 KAR 008:165
	902 KAR 008:170
213.046	921 KAR 001:380
214.036	922 KAR 002:160
216.300	910 KAR 001:240
216.380	907 KAR 010:820
216.510 - 216.525	900 KAR 002:040
	902 KAR 020:300
216.530	902 KAR 020:008
216.532	902 KAR 020:300
216.535	902 KAR 020:300
216.537 - 216.590	900 KAR 002:021
216.540	902 KAR 020:300
216.543	902 KAR 020:300
216.545	902 KAR 020:300
216.547	902 KAR 020:300
216.555 - 216.567	900 KAR 002:040
216.577	900 KAR 002:040
216.595	910 KAR 001:240
216.785 - 216.793	902 KAR 020:300
216.789	910 KAR 001:240
216.793	910 KAR 001:240
216.860	906 KAR 001:071
216.865	906 KAR 001:071
216.900 - 216.915	906 KAR 001:071
216.930	906 KAR 001:071
216.2925	902 KAR 020:008
216A.010	900 KAR 002:040
216B.010	900 KAR 006:075
	902 KAR 020:008
216B.010 - 216B.130	900 KAR 005:020
216B.010 - 216B.131	902 KAR 020:260
216B.010 - 216B.170	902 KAR 020:275
216B.015	900 KAR 006:075
	902 KAR 020:008
216B.020	902 KAR 020:008
	902 KAR 020:251
216B.040	900 KAR 006:020
	902 KAR 020:008
216B.042	902 KAR 020:008
216B.045 - 216B.055	902 KAR 020:008
216B.075	902 KAR 020:008
216B.090	900 KAR 006:075
216B.105 - 216B.131	902 KAR 020:008
216B.176	902 KAR 020:401
216B.177	902 KAR 020:401
216B.185	902 KAR 020:008
216B.400	201 KAR 020:411
216B.450	922 KAR 001:050
216B.455	900 KAR 006:075
216B.990	900 KAR 006:075
	902 KAR 020:008
	902 KAR 020:260

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216C.010	900 KAR 011:010
216C.030	900 KAR 011:010
216C.040	900 KAR 011:010
216C.050	900 KAR 011:010
216C.060	900 KAR 011:010
216C.070	900 KAR 011:010
216C.080	900 KAR 011:010
216C.090	900 KAR 011:010
216C.100	900 KAR 011:010
216C.110	900 KAR 011:010
216C.120	900 KAR 011:010
216C.160	900 KAR 011:010
216C.170	900 KAR 011:010
216C.180	900 KAR 011:010
216C.200	900 KAR 011:010
216C.210	900 KAR 011:010
216C.220	900 KAR 011:010
216C.230	900 KAR 011:010
217.005	902 KAR 045:007
217.005 - 217.205	902 KAR 045:005
	902 KAR 045:160
217.005 - 217.215	902 KAR 045:090
217.015	301 KAR 001:155
217.127	902 KAR 045:007
217.280 - 217.390	902 KAR 045:005
217.290	902 KAR 045:090
217.290 - 217.390	902 KAR 045:160
217.801	902 KAR 047:071
217.990 - 217.992	902 KAR 045:005
	902 KAR 045:160
217.992	902 KAR 045:090
217B	302 KAR 029:020
217B.500 - 217B.900	902 KAR 045:090
218A.205	201 KAR 020:056
	201 KAR 020:161
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218A.160	902 KAR 055:011
218A.172	201 KAR 009:260
	201 KAR 020:057
218A.175	902 KAR 020:260
218A.205	201 KAR 009:260
	201 KAR 020:057
	902 KAR 020:260
219.310 - 219.410	815 KAR 025:040
223	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
224	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
224.01-110	400 KAR 004:125
224.1	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:341
224.1-010	401 KAR 005:002
224.1-070	401 KAR 005:002
224.1-400	401 KAR 005:002
	401 KAR 039:060
	401 KAR 042:060
	401 KAR 042:250
224.1-405	401 KAR 042:250
224.10	401 KAR 039:060
	401 KAR 039:080
	401 KAR 039:090
	401 KAR 040:051
	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:341
224.10-100	401 KAR 052:050

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	401 KAR 052:070
224.10-240	400 KAR 004:125
224.10-410	400 KAR 001:110
	401 KAR 042:250
224.10-420	401 KAR 042:250
224.10-430	401 KAR 042:250
224.10-440	401 KAR 042:250
	400 KAR 004:125
224.10-470	401 KAR 042:250
	400 KAR 004:125
224.20-100	401 KAR 052:050
	401 KAR 052:070
224.20-110	401 KAR 052:050
	401 KAR 052:070
224.20-120	401 KAR 052:050
	401 KAR 052:070
224.40	401 KAR 042:060
	401 KAR 042:341
224.40-310	401 KAR 039:060
224.43	401 KAR 042:060
	401 KAR 042:341
224.46	401 KAR 039:060
	401 KAR 039:080
	401 KAR 039:090
	401 KAR 040:051
	401 KAR 042:060
	401 KAR 042:341
224.50-130	401 KAR 039:090
224.60	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:341
224.60-105	401 KAR 042:330
224.60-110	401 KAR 042:250
224.60-120	401 KAR 042:250
224.60-130	401 KAR 042:250
	401 KAR 042:330
224.60-135	401 KAR 042:250
224.60-140	401 KAR 042:250
	401 KAR 042:330
224.60-150	401 KAR 042:250
	401 KAR 042:330
224.70-100	401 KAR 005:002
224.70-120	401 KAR 005:002
224.99	401 KAR 039:060
	401 KAR 039:080
	401 KAR 039:090
	401 KAR 040:051
224.99-010	401 KAR 005:002
	401 KAR 040:051
224.99-020	401 KAR 040:051
224.99-030	401 KAR 040:051
227.450	815 KAR 035:015
227.460	815 KAR 035:020
227.480	815 KAR 035:015
	815 KAR 035:020
227.487	815 KAR 035:020
227.489	815 KAR 035:015
227.491	815 KAR 035:015
	815 KAR 035:020
227.492	815 KAR 035:015
227.495	815 KAR 035:015
227.550	815 KAR 025:050
	815 KAR 025:060
	815 KAR 025:090
	815 KAR 025:100
227.550 - 227.660	815 KAR 025:020
227.550 - 227.665	815 KAR 025:001
227.555	815 KAR 025:050
227.560	815 KAR 025:060
227.570	815 KAR 002:010
	815 KAR 002:020
	815 KAR 025:050
	815 KAR 025:060

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	815 KAR 025:090
227.580	815 KAR 025:050
	815 KAR 025:060
227.590	815 KAR 002:010
	815 KAR 002:020
	815 KAR 025:040
	815 KAR 025:050
	815 KAR 025:060
	815 KAR 025:090
227.600	815 KAR 025:050
	815 KAR 025:060
227.610	815 KAR 025:060
227.620	815 KAR 025:060
227.630	815 KAR 025:060
227.640	815 KAR 025:100
227.660	815 KAR 025:090
227.990	815 KAR 025:050
	815 KAR 025:060
	815 KAR 025:090
227.992	815 KAR 025:050
227A.010	815 KAR 035:060
227A.020	815 KAR 002:030
227A.040	815 KAR 002:010
	815 KAR 002:020
	815 KAR 035:080
	815 KAR 035:090
	815 KAR 035:101
227A.060	815 KAR 035:060
	815 KAR 035:080
	815 KAR 035:090
227A.100	815 KAR 002:010
	815 KAR 002:020
	815 KAR 035:060
227A.110	815 KAR 035:080
230.210	810 KAR 006:020
	810 KAR 008:050
230.215	810 KAR 002:001
	810 KAR 002:020
	810 KAR 002:030
	810 KAR 002:040
	810 KAR 002:050
	810 KAR 002:060
	810 KAR 002:070
	810 KAR 002:080
	810 KAR 003:010
	810 KAR 003:020
	810 KAR 004:010
	810 KAR 004:020
	810 KAR 004:030
	810 KAR 004:040
	810 KAR 004:050
	810 KAR 004:060
	810 KAR 004:070
	810 KAR 004:080
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:010
	810 KAR 005:020
	810 KAR 005:030
	810 KAR 004:040
	810 KAR 005:050
	810 KAR 005:060
	810 KAR 005:070
	810 KAR 005:080
	810 KAR 006:020
	810 KAR 007:020
	810 KAR 007:030
	810 KAR 007:040
	810 KAR 007:060
	810 KAR 007:070
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:040

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	810 KAR 008:050
	810 KAR 008:060
	810 KAR 009:010
230.218	810 KAR 007:010
230.225	810 KAR 001:301
	810 KAR 003:030
	810 KAR 007:030
	810 KAR 007:060
	810 KAR 007:070
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:040
	811 KAR 001:301
	811 KAR 002:301
230.230	810 KAR 002:010
230.240	810 KAR 002:010
	810 KAR 002:020
	810 KAR 002:050
	810 KAR 004:030
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
230.445	810 KAR 007:060
	810 KAR 007:070
230.260	810 KAR 002:001
	810 KAR 002:020
	810 KAR 002:030
	810 KAR 002:050
	810 KAR 002:060
	810 KAR 002:070
	810 KAR 002:080
	810 KAR 003:010
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 003:040
	810 KAR 004:020
	810 KAR 004:040
	810 KAR 004:050
	810 KAR 004:060
	810 KAR 004:070
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:010
	810 KAR 005:020
	810 KAR 005:030
	810 KAR 005:050
	810 KAR 005:060
	810 KAR 005:070
	810 KAR 005:080
	810 KAR 006:020
	810 KAR 007:040
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
230.265	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:060
230.280	810 KAR 003:010
	810 KAR 003:020
	810 KAR 005:070
	810 KAR 005:080
230.290	810 KAR 002:030
	810 KAR 002:050
	810 KAR 003:010
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 003:040
	810 KAR 004:030

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	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:070
	810 KAR 005:080
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
230.300	810 KAR 003:010
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 005:070
	810 KAR 008:030
	810 KAR 008:040
230.310	810 KAR 002:030
	810 KAR 002:050
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 003:040
	810 KAR 004:030
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:040
	810 KAR 005:070
	810 KAR 005:080
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 009:010
230.320	810 KAR 002:030
	810 KAR 003:010
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 003:040
	810 KAR 004:030
	810 KAR 004:090
	810 KAR 004:100
	810 KAR 005:070
	810 KAR 007:070
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:030
	810 KAR 008:040
	810 KAR 008:050
	810 KAR 008:060
	810 KAR 009:010
230.330	810 KAR 007:020
	810 KAR 007:070
	810 KAR 009:010
230.361	810 KAR 003:030
	810 KAR 004:080
	810 KAR 006:020
	810 KAR 008:030
230.3615	810 KAR 006:020
230.370	810 KAR 003:030
	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:040
230.377	810 KAR 003:050
230.380	810 KAR 003:030
	810 KAR 003:050
230.400	810 KAR 007:030
	810 KAR 007:070
230.443	810 KAR 007:060
230.770	810 KAR 007:040
	810 KAR 007:070
230.800	810 KAR 007:020
	810 KAR 007:070
230.802	810 KAR 007:040
	810 KAR 007:070
230.804	810 KAR 007:070
230.990	810 KAR 006:020
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230.398	810 KAR 005:080
235.010	301 KAR 001:015
235.990	301 KAR 001:015
236.097	815 KAR 015:080
236.210	815 KAR 015:080
241.010	804 KAR 005:080
241.060	804 KAR 011:031
243.020	804 KAR 008:050
243.0307	804 KAR 001:110
243.036	804 KAR 001:110
243.130	804 KAR 001:070
243.150	804 KAR 001:070
243.170	804 KAR 001:070
243.180	804 KAR 001:070
243.232	804 KAR 005:080
243.260	804 KAR 001:110
243.340	804 KAR 001:070
243.390	804 KAR 004:011
243.630	804 KAR 004:011
244.090	804 KAR 005:021
244.130	804 KAR 001:030
	804 KAR 002:016
244.240	804 KAR 001:070
	804 KAR 001:110
	804 KAR 005:021
244.590	804 KAR 001:070
	804 KAR 001:110
244.600	804 KAR 005:021
246.210	302 KAR 020:221
247	302 KAR 001:011
	302 KAR 077:011
250.491 - 250.631	012 KAR 002:006
	012 KAR 002:011
	012 KAR 002:016
	012 KAR 002:017
	012 KAR 002:018
	012 KAR 002:021
	012 KAR 002:026
	012 KAR 002:036
	012 KAR 002:056
	012 KAR 003:007
	012 KAR 003:032
250.501	012 KAR 002:031
	012 KAR 002:041
	012 KAR 002:046
	012 KAR 002:051
	012 KAR 002:061
	012 KAR 003:012
	012 KAR 003:017
	012 KAR 003:022
	012 KAR 003:027
	012 KAR 003:028
	012 KAR 003:037
	012 KAR 003:039
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250.511	012 KAR 002:041
	012 KAR 002:051
	012 KAR 002:061
	012 KAR 003:037
250.521	012 KAR 002:061
	012 KAR 003:012
	012 KAR 003:017
	012 KAR 003:022
	012 KAR 003:027
	012 KAR 003:028
	012 KAR 003:039
	012 KAR 003:042
250.531	012 KAR 002:031
	012 KAR 003:017
250.541	012 KAR 002:041
	012 KAR 002:051
	012 KAR 002:046
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250.551	012 KAR 002:031
	012 KAR 002:046
	012 KAR 002:051
250.561	012 KAR 002:061
250.581	012 KAR 002:051
257	302 KAR 020:211
	302 KAR 020:231
	302 KAR 020:541
	302 KAR 020:581
257.020	302 KAR 020:561
	302 KAR 020:571
257.030	302 KAR 020:561
	302 KAR 020:571
257.040	302 KAR 020:571
257.050	302 KAR 020:221
	302 KAR 020:571
257.080	302 KAR 020:221
257.110	302 KAR 020:561
257.120	302 KAR 020:561
257.110 - 257.170	302 KAR 020:221
257.140	302 KAR 020:561
257.480	302 KAR 020:221
260.850 - 260.869	302 KAR 050:080
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262.902	302 KAR 100:011
	302 KAR 100:021
262.904	302 KAR 100:011
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262.908	302 KAR 100:011
	302 KAR 100:021
286	808 KAR 014:010
286.3-010	808 KAR 001:140
	808 KAR 001:161
286.3-020	808 KAR 001:140
	808 KAR 001:161
286.3-050	808 KAR 001:140
	808 KAR 001:161
286.3-095	808 KAR 001:140
	808 KAR 001:161
	808 KAR 011:021
	808 KAR 015:040
286.3-135	808 KAR 001:140
286.3-102	808 KAR 001:161
	808 KAR 015:030
286.3-135	808 KAR 001:161
286.3-140	808 KAR 001:140
	808 KAR 001:161
286.3-145	808 KAR 001:140
	808 KAR 001:161
286.3-146	808 KAR 001:140
	808 KAR 001:161
286.3-170	808 KAR 001:140
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286.3-172	808 KAR 001:140
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286.3-174	808 KAR 001:140
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286.3-180	808 KAR 001:060
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	808 KAR 001:161
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286.3-185	808 KAR 001:161
	808 KAR 015:030
286.3-280	808 KAR 001:161
	808 KAR 015:010
286.3-290	808 KAR 001:161
	808 KAR 015:010
286.3-300	808 KAR 001:161
	808 KAR 015:010
286.3-375	808 KAR 001:161
286.3-450	808 KAR 001:140
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286.3-480	808 KAR 001:140
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286.3-690	808 KAR 001:161
	808 KAR 015:020
286.3-820	808 KAR 001:140
	808 KAR 001:161
	808 KAR 015:030
286.3-905	808 KAR 011:021
	808 KAR 015:040
5286.3-920	808 KAR 001:140
	808 KAR 001:161
286.4	808 KAR 001:170
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286.4-460	808 KAR 006:095
286.4-490	808 KAR 006:095
286.4-590	808 KAR 014:020
286.5-061	808 KAR 001:060
286.6-055	808 KAR 001:060
286.6-070	808 KAR 003:061
286.6-095	808 KAR 003:050
286.6-100	808 KAR 003:050
	808 KAR 003:061
286.6-225	808 KAR 003:050
286.6-585	808 KAR 003:050
286.6-095	808 KAR 003:050
286.6-405	808 KAR 003:061
286.7	808 KAR 003:061
286.8	808 KAR 012:111
286.8-010	808 KAR 012:055
286.8-020	808 KAR 001:170
286.8-030	808 KAR 001:170
286.8-036	808 KAR 001:170
286.8-070	808 KAR 001:170
286.8-080	808 KAR 001:170
286.8-090	808 KAR 001:170
286.8-120	808 KAR 012:050
286.8-150	808 KAR 001:180
286.8-225	808 KAR 001:180
286.8-227	808 KAR 001:180
286.8-255	808 KAR 012:055
286.8-260	808 KAR 001:170
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286.9-010	808 KAR 001:170
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286.9-020	808 KAR 001:170
	808 KAR 009:050
286.9-030	808 KAR 001:170
	808 KAR 009:050
286.9-040	808 KAR 001:170
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286.9-050	808 KAR 001:170
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286.9-060	808 KAR 001:170
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286.9-070	808 KAR 009:050
286.9-071	808 KAR 001:170
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286.9-073	808 KAR 001:170
	808 KAR 009:050
286.9-075	808 KAR 009:010
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286.9-080	808 KAR 001:170
286.9-090	808 KAR 009:031
286.9-100	808 KAR 009:010
	808 KAR 009:040
286.9-104	808 KAR 009:050
286.9-120	808 KAR 009:031
286.9-140	808 KAR 009:010
290.095	808 KAR 003:061
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292.322	808 KAR 001:180
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304.3	806 KAR 002:121
304.3-150	806 KAR 002:092
304.3-240	806 KAR 017:570
304.3-270	103 KAR 015:180
304.9-020	806 KAR 017:091
304.9-053	806 KAR 009:360
304.9-054	806 KAR 009:360
304.5-130	806 KAR 005:011
304.5-140	806 KAR 005:011
304.5-150	806 KAR 005:011
304.10-030	806 KAR 010:030
304.10-050	806 KAR 010:030
304.10-120	806 KAR 002:121
304.10-170	806 KAR 010:030
304.10-180	806 KAR 010:030
304.11-010	806 KAR 005:011
304.11-030	401 KAR 039:090
304.11-050	806 KAR 005:011
304.12-013	806 KAR 017:091
304.12-020	806 KAR 017:570
304.12-190	806 KAR 017:091
304.14-020	806 KAR 017:091
304.14-120	806 KAR 017:020
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304.14-140	806 KAR 017:091
304.14-150	806 KAR 017:091
304.14-180	806 KAR 017:091
304.14-210	806 KAR 017:091
304.14-360	806 KAR 017:091
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304.14-440	806 KAR 017:091
304.14-450	806 KAR 017:091
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304.17-030	806 KAR 017:091
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304.17-070	806 KAR 017:091
304.17-310	806 KAR 017:091
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304.17-313	806 KAR 017:091
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304.17A.005	806 KAR 017:091
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304.17A-135 - 304.17A-145	806 KAR 017:091
304.17A.139	806 KAR 017:091
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304.17A.142	806 KAR 017:091
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304.17A.149	806 KAR 017:091
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304.17A.171	806 KAR 017:091
304.17A.200	806 KAR 017:091
304.17A.230	806 KAR 017:091
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304.17A.245	806 KAR 017:091
304.17A.250	806 KAR 017:091
304.17A.258	806 KAR 017:091
304.17A-500	806 KAR 017:300
304.17A.520	806 KAR 017:091
304.17A-527	806 KAR 017:300
304.17A-530	806 KAR 017:300

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304.17A.545	806 KAR 017:091
304.17A-560	806 KAR 017:300
304.17A-575	806 KAR 017:300
304.17A-577	806 KAR 017:300
304.17A-578	806 KAR 017:300
304.17A.647	806 KAR 017:091
304.17A-700	806 KAR 017:360
304.17A-702	806 KAR 017:360
304.17A-704	806 KAR 017:360
304.17A-706	806 KAR 017:360
304.17A-708	806 KAR 017:360
304.17A-720	806 KAR 017:360
304.17A-728	806 KAR 017:300
304.17A-730	806 KAR 017:360
304.17B.001 - 304.17B.033	806 KAR 017:091
304.17C-060	806 KAR 017:091
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304.17C-090	806 KAR 017:360
304.18-032	806 KAR 017:091
304.18-034	806 KAR 017:570
304.18-110	806 KAR 017:091
304.18-0365	806 KAR 017:091
304.18-0365 - 304.18-037	806 KAR 017:091
304.18-0985	806 KAR 017:091
304.24-420	806 KAR 005:011
304.32-153	806 KAR 017:091
304.32-275	806 KAR 017:570
304.32-280	806 KAR 017:091
304.32-1585	806 KAR 017:091
304.32-1595	806 KAR 017:091
304.33-030	806 KAR 017:570
304.38-199	806 KAR 017:091
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304.38-210	806 KAR 017:091
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304.99	806 KAR 017:300
304.99-085	806 KAR 010:030
304.99-123	806 KAR 017:360
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311.621	900 KAR 009:010
311.990	201 KAR 009:260
311A.030	900 KAR 006:075
312.019	201 KAR 021:015
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312.021	201 KAR 021:045
314	902 KAR 020:260
314.011	201 KAR 020:056
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	201 KAR 020:062
	201 KAR 020:065
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	201 KAR 020:320
	201 KAR 020:411
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314.021	201 KAR 020:320
314.027	201 KAR 020:240
314.031	201 KAR 020:161
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314.041	201 KAR 020:240
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314.042	201 KAR 020:056
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314.071	201 KAR 020:161
	201 KAR 020:162
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314.073	201 KAR 020:215
	201 KAR 020:220
	201 KAR 020:240
314.075	201 KAR 020:240
314.091	201 KAR 020:056
	201 KAR 020:161
	201 KAR 020:162
314.101	201 KAR 020:240
314.103	201 KAR 020:056
	201 KAR 020:411
314.105	201 KAR 020:226
314.107	201 KAR 020:161
314.109	201 KAR 020:056
314.111	201 KAR 020:056
	201 KAR 020:260
	201 KAR 020:280
	201 KAR 020:310
	201 KAR 020:320
	201 KAR 020:340
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	201 KAR 020:632
314.131	201 KAR 020:062
	201 KAR 020:220
	201 KAR 020:260
	201 KAR 020:280
	201 KAR 020:320
	201 KAR 020:350
314.142	201 KAR 020:240
	201 KAR 020:411
314.161	201 KAR 020:056
	201 KAR 020:162
	201 KAR 020:240
314.171	201 KAR 020:240
314.181	201 KAR 020:226
314.193	201 KAR 020:057
314.195	201 KAR 020:057
314.196	201 KAR 020:057
314.470	201 KAR 020:161
	201 KAR 020:310
314.475	201 KAR 020:056
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314.991	201 KAR 020:161
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	201 KAR 020:215
315.010	201 KAR 002:370
315.020	201 KAR 002:370
315.030	201 KAR 002:370
315.036	902 KAR 055:011
315.065	201 KAR 002:015
315.120	201 KAR 002:015
315.121	201 KAR 002:370
315.191	902 KAR 055:011
315.402	902 KAR 055:011
315.406	902 KAR 055:011
317A.020	201 KAR 012:030
	201 KAR 012:082
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317A.050	201 KAR 012:030
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317A.060	201 KAR 012:030
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317A.062	201 KAR 012:260
317A.090	317 KAR 012:082
317A.130	201 KAR 012:280
318.010	815 KAR 020:030
318.020	815 KAR 020:030
318.030	815 KAR 020:030
318.040	815 KAR 020:030

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318.050	815 KAR 002:040
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318.054	815 KAR 002:010
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	815 KAR 002:040
	815 KAR 020:030
318.060	815 KAR 020:030
318.080	815 KAR 020:030
318.100	815 KAR 002:030
318.130	815 KAR 002:010
	815 KAR 002:020
	902 KAR 045:160
318.134	815 KAR 002:040
318.170	815 KAR 002:030
	815 KAR 020:041
319.005	201 KAR 026:130
319.032	201 KAR 026:130
	201 KAR 026:171
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319.050	201 KAR 026:171
	201 KAR 026:175
	201 KAR 026:200
319.053	201 KAR 026:175
319.056	201 KAR 026:171
319.064	201 KAR 026:171
	201 KAR 026:175
	201 KAR 026:200
	201 KAR 026:211
	201 KAR 026:280
319.071	201 KAR 026:175
319.082	201 KAR 026:130
	201 KAR 026:171
319.092	201 KAR 026:140
	201 KAR 026:171
319.118	201 KAR 026:130
	201 KAR 026:171
319.990	201 KAR 026:130
319A.010	201 KAR 028:170
319A.070	201 KAR 028:021
319A.080	201 KAR 028:060
	201 KAR 028:170
319A.100	201 KAR 028:060
319A.110	201 KAR 028:060
319A.120	201 KAR 028:060
319A.140	201 KAR 028:060
319A.150	201 KAR 028:060
319A.160	201 KAR 028:060
319A.170	201 KAR 028:060
	201 KAR 028:170
322	401 KAR 042:341
322A	401 KAR 042:341
327.010	201 KAR 022:020
327.050	201 KAR 022:020
	201 KAR 022:040
	201 KAR 022:070
327.060	201 KAR 022:020
	201 KAR 022:070
327.070	201 KAR 022:040
327.075	201 KAR 022:020
327.080	201 KAR 022:020
327.300	201 KAR 022:170
327.310	201 KAR 022:020
335.030	201 KAR 023:150
335.070	201 KAR 023:150
335.150	201 KAR 023:150
335.155	201 KAR 023:150
335.305	201 KAR 032:110
335.310	201 KAR 032:110
335.320	201 KAR 032:110
335.325	201 KAR 032:110
335.380	201 KAR 032:110
335.399	201 KAR 032:110
337.275	922 KAR 002:160
338	803 KAR 050:010

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341.190	787 KAR 001:010
342.0011	803 KAR 025:089
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	803 KAR 030:010
342.019	803 KAR 025:089
342.020	803 KAR 025:089
	803 KAR 025:290
342.035	803 KAR 025:089
342.122	803 KAR 030:010
	803 KAR 030:021
342.1221	803 KAR 030:010
342.1222	803 KAR 030:010
342.1223	803 KAR 030:010
342.1231	803 KAR 030:010
	803 KAR 030:021
342.340	803 KAR 030:010
342.650	803 KAR 030:010
350.010	400 KAR 001:110
350.028	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.029	400 KAR 001:090
350.032	400 KAR 001:001
	400 KAR 001:090
350.060	400 KAR 001:090
350.070	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.085	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
350.090	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:110
350.093	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.130	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.240	400 KAR 001:090
350.255	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:110
350.300	400 KAR 001:090
350.305	400 KAR 001:090
350.465	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.610	400 KAR 001:001
	400 KAR 001:090
350.990	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.0301	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:110
350.0305	400 KAR 001:001
	400 KAR 001:090
351.010	805 KAR 007:080
351.070	805 KAR 003:100
351.127	805 KAR 007:080
351.182	805 KAR 007:080
351.315	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110

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351.345	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
351.350	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
353	400 KAR 001:100
353.060	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.200	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.510	805 KAR 001:210
353.590	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.620	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.630	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	805 KAR 001:210
353.640	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	805 KAR 001:210
353.700	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.5901	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
367.680	040 KAR 002:345
367.686	040 KAR 002:345
367.688	040 KAR 002:345
367.689	040 KAR 002:345
367.690	040 KAR 002:345
369.101 - 369.120	895 KAR 001:035
	907 KAR 008:040
382.800 - 382.860	418 KAR 001:040
	418 KAR 001:050
352.390	805 KAR 007:080
387	922 KAR 001:565
387.025	922 KAR 001:140
403.211	921 KAR 001:380
403.270-403.355	922 KAR 001:565
403.707	201 KAR 020:411
405.024	922 KAR 001:565
405.430	921 KAR 001:380
405.467	921 KAR 001:380
405.520	921 KAR 001:380
406.021	921 KAR 001:380
406.025	921 KAR 001:380
407.5101 - 407.5903	921 KAR 001:380
421.500 - 421.575	201 KAR 020:411
424	400 KAR 002:100
424.110 - 424.150	902 KAR 008:170
431.615	907 KAR 001:360
433.900 - 433.906	830 KAR 001:010
439	501 KAR 006:020
446.010	418 KAR 001:010
527.100	922 KAR 001:140
	922 KAR 001:565
527.110	922 KAR 001:140
	922 KAR 001:565
600 - 645	505 KAR 001:100
	505 KAR 001:110
	505 KAR 001:180
	505 KAR 001:190
600.020	922 KAR 001:050

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	922 KAR 001:100
	922 KAR 001:305
	922 KAR 001:360
	922 KAR 001:400
	922 KAR 001:530
	922 KAR 002:160
	922 KAR 001:565
605.090	922 KAR 001:100
	922 KAR 001:140
	922 KAR 001:360
605.100	922 KAR 001:530
605.120	922 KAR 002:160
	922 KAR 001:565
605.130	922 KAR 001:530
	922 KAR 001:400
	922 KAR 001:565
605.150	922 KAR 001:400
	922 KAR 001:565
610.110	922 KAR 001:360
	922 KAR 001:140
	922 KAR 001:305
	922 KAR 001:565
610.125	922 KAR 001:140
610.127	922 KAR 001:140
610.170	921 KAR 001:380
	922 KAR 001:530
610.110	922 KAR 001:305
	922 KAR 001:400
	922 KAR 001:500
615.030	922 KAR 001:010
	922 KAR 001:100
620.020	922 KAR 001:140
	922 KAR 001:400
	922 KAR 001:560
	922 KAR 001:500
	922 KAR 002:160
	922 KAR 001:565
620.050	922 KAR 001:100
620.060	922 KAR 001:140
620.090	922 KAR 001:140
620.140	922 KAR 001:140
	922 KAR 001:305
	922 KAR 001:400
	922 KAR 001:500
620.180	922 KAR 001:140
620.360	922 KAR 001:100
625	922 KAR 001:010
	922 KAR 001:050
	922 KAR 001:060
	922 KAR 001:100
625.040	922 KAR 001:140
625.045	922 KAR 001:100
625.065	922 KAR 001:560
625.090	922 KAR 001:140
625.108	922 KAR 001:100
2 C.F.R.	902 KAR 008:165
	902 KAR 008:170
7 C.F.R.	921 KAR 003:025
	921 KAR 003:030
	921 KAR 003:035
	921 KAR 003:060
	921 KAR 003:070
	922 KAR 002:160
10 C.F.R.	401 KAR 042:020
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
12 C.F.R.	808 KAR 003:061
	808 KAR 014:010
	808 KAR 015:030
20 C.F.R.	895 KAR 001:001

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	922 KAR 002:160
21 C.F.R.	012 KAR 002:031
	012 KAR 002:041
	012 KAR 002:051
	012 KAR 003:037
	902 KAR 045:090
	902 KAR 045:160
23 C.F.R.	603 KAR 005:070
24 C.F.R.	815 KAR 025:090
29 C.F.R.	806 KAR 017:091
	815 KAR 035:060
	902 KAR 020:260
	902 KAR 020:275
30 C.F.R.	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
34 C.F.R.	011 KAR 004:080
	922 KAR 002:160
39 C.F.R.	400 KAR 001:090
40 C.F.R.	401 KAR 005:002
	401 KAR 039:060
	401 KAR 039:080
	401 KAR 039:090
	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:250
	401 KAR 042:330
	401 KAR 042:341
	401 KAR 052:050
	401 KAR 052:070
	902 KAR 100:022
42 C.F.R.	806 KAR 017:570
	895 KAR 001:001
	895 KAR 001:010
	895 KAR 001:015
	895 KAR 001:030
	895 KAR 001:035
	895 KAR 001:055
	900 KAR 002:040
	900 KAR 009:010
	902 KAR 020:300
	907 KAR 001:005
	907 KAR 001:025
	907 KAR 001:270
	907 KAR 001:360
	907 KAR 001:560
	907 KAR 001:563
	907 KAR 008:040
	907 KAR 010:820
45 C.F.R.	806 KAR 009:360
	806 KAR 017:570
	900 KAR 002:040
	900 KAR 009:010
	902 KAR 020:260
	902 KAR 020:275
	902 KAR 100:072
	907 KAR 001:360
	907 KAR 008:040
	921 KAR 001:380
	921 KAR 002:055
	921 KAR 003:025
	922 KAR 001:060
	922 KAR 001:100
	922 KAR 001:140
	922 KAR 001:400
	922 KAR 001:500
	922 KAR 001:530
	922 KAR 002:160
49 C.F.R.	902 KAR 100:070
50 C.F.R.	400 KAR 003:020
74 C.F.R.	806 KAR 017:570
7 U.S.C.	302 KAR 029:020

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	302 KAR 050:080
	921 KAR 003:025
	921 KAR 003:030
	921 KAR 003:035
	921 KAR 003:060
	922 KAR 002:160
12 U.S.C.	808 KAR 003:050
15 U.S.C.	012 KAR 003:012
	012 KAR 003:028
	012 KAR 003:039
	401 KAR 005:002
	808 KAR 012:055
18 U.S.C.	601 KAR 002:030
20 U.S.C.	011 KAR 004:080
	011 KAR 015:010
	703 KAR 005:270
	702 KAR 007:065
	704 KAR 003:292
	704 KAR 003:365
	808 KAR 003:050
	922 KAR 001:500
21 U.S.C.	012 KAR 002:041
	012 KAR 003:037
	902 KAR 020:260
	902 KAR 045:090
	902 KAR 045:160
23 U.S.C.	603 KAR 005:070
25 U.S.C.	922 KAR 001:100
	922 KAR 001:140
	922 KAR 002:160
26 U.S.C.	101 KAR 002:095
	103 KAR 015:180
	105 KAR 001:145
	105 KAR 001:147
	301 KAR 003:100
29 U.S.C.	806 KAR 017:091
	806 KAR 017:570
	895 KAR 001:001
	922 KAR 002:160
30 U.S.C.	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
	803 KAR 030:010
	921 KAR 002:055
31 U.S.C.	045 KAR 001:050
33 U.S.C.	401 KAR 005:002
	803 KAR 030:010
34 U.S.C.	922 KAR 002:160
38 U.S.C.	921 KAR 002:055
	922 KAR 002:160
42 U.S.C.	401 KAR 005:002
	401 KAR 039:060
	401 KAR 042:005
	401 KAR 042:020
	401 KAR 042:060
	401 KAR 042:341
	401 KAR 052:050
	806 KAR 017:091
	806 KAR 017:570
	815 KAR 025:050
	895 KAR 001:001
	895 KAR 001:010
	895 KAR 001:015
	895 KAR 001:020
	895 KAR 001:025
	895 KAR 001:030
	895 KAR 001:035
	895 KAR 001:040
	895 KAR 001:045
	895 KAR 001:050
	895 KAR 001:055
	900 KAR 002:040
	902 KAR 020:260

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	902 KAR 020:275		
	902 KAR 100:022		
	902 KAR 100:052		
	902 KAR 100:070		
	902 KAR 100:072		
	902 KAR 100:100		
	902 KAR 100:142		
	906 KAR 001:190		
	907 KAR 001:005		
	907 KAR 001:270		
	907 KAR 001:360		
	907 KAR 001:560		
	907 KAR 001:563		
	907 KAR 008:040		
	907 KAR 010:820		
	921 KAR 001:380		
	921 KAR 002:055		
	921 KAR 003:030		
	921 KAR 003:035		
	922 KAR 001:060		
	922 KAR 001:100		
	922 KAR 001:140		
	922 KAR 001:305		
	922 KAR 001:360		
	922 KAR 001:400		
	922 KAR 001:500		
	922 KAR 001:530		
	922 KAR 002:160		
45 U.S.C.	921 KAR 002:055		
49 U.S.C.	302 KAR 029:020		
	603 KAR 005:070		
50 U.S.C.	103 KAR 017:130		
52 U.S.C.	921 KAR 003:030		
2012 Ky Acts ch. 144, Part XII	806 KAR 017:091		
2016 Ky Acts ch. 149, Part 1	922 KAR 002:160		
Pres. EO 13166	921 KAR 003:030		
Pub. L 108-173	806 KAR 017:570		
Pub. L 114-94	603 KAR 005:070		
Pub L 14-198	201 KAR 020:065		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	First Effective Date	Previous Last Effective Date*	Letter Filed Date	Action
011 KAR 003:001	03-04-1993	01-10-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:005	12-09-1992	09-12-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:045	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:055	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:100	08-20-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 003:001	03-04-1993	01-10-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:005	12-09-1992	09-12-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:045	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:055	03-04-1993	03-04-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 003:100	08-20-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 004:020	02-04-1976	09-13-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 004:030	11-01-1978	04-14-1997	09-28-2018	Remain in Effect without Amendment
011 KAR 004:040	10-09-1984	11-08-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 004:050	05-14-1985	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 004:060	10-01-1992	10-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 005:001	08-01-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:033	08-01-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:110	11-04-1988	08-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 005:130	03-23-1989	10-06-2006	09-28-2018	Remain in Effect without Amendment
011 KAR 005:140	02-03-1989	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 005:145	08-01-1992	07-01-2016	09-28-2018	Remain in Effect without Amendment
011 KAR 005:150	02-03-1989	09-09-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 005:160	02-03-1989	03-11-2005	09-28-2018	Remain in Effect without Amendment
011 KAR 005:170	02-03-1989	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:180	02-03-1989	06-03-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 005:200	04-06-2007	07-13-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 007:010	03-04-1986	02-07-1991	09-28-2018	Remain in Effect without Amendment
011 KAR 007:020	08-12-1986	02-07-1991	09-28-2018	Remain in Effect without Amendment
011 KAR 008:010	08-12-1986	08-09-1990	09-28-2018	Remain in Effect without Amendment
011 KAR 008:020	08-12-1986	08-09-1990	09-28-2018	Remain in Effect without Amendment
011 KAR 008:030	08-09-1990	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 008:040	08-09-1990	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 010:010	04-14-1987	10-07-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 010:020	04-14-1987	10-07-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 012:010	08-02-1991	12-18-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:020	08-02-1991	10-11-1999	09-28-2018	Remain in Effect without Amendment
011 KAR 012:030	08-02-1991	12-18-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:040	08-02-1991	02-11-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:050	08-02-1991	02-11-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:060	08-02-1991	07-12-2010	09-28-2018	Remain in Effect without Amendment
011 KAR 012:070	08-02-1991	08-14-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 012:090	08-02-1991	10-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 013:010	03-06-1997	03-06-1997	09-28-2018	Remain in Effect without Amendment
011 KAR 014:010	10-01-1998	11-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:020	10-01-1998	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 014:030	10-01-1998	03-10-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 014:040	10-01-1998	08-15-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:050	10-01-1998	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 014:060	10-01-1998	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 014:070	10-01-1998	11-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:080	10-01-1998	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 015:010	10-01-1998	07-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 015:020	10-01-1998	01-28-2014	09-28-2018	Remain in Effect without Amendment
011 KAR 015:030	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:040	10-01-1998	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 015:050	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:060	10-01-1998	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 015:070	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:080	09-09-2002	09-09-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 015:090	03-01-1999	03-09-2018	09-28-2018	Remain in Effect without Amendment

011 KAR 015:100	10-12-2015	10-12-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 016:001	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:010	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:020	02-05-2001	02-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 016:030	02-05-2001	02-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 016:040	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:050	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:060	02-05-2001	10-12-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 016:070	07-06-2007	07-06-2007	09-28-2018	Remain in Effect without Amendment
011 KAR 017:010	12-01-2003	11-05-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 017:040	12-01-2003	01-04-2005	09-28-2018	Remain in Effect without Amendment
011 KAR 017:050	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:060	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:070	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:080	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:090	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 017:100	12-01-2003	11-05-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 017:110	12-01-2003	12-01-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 019:010	04-01-2011	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 019:020	04-01-2011	04-01-2011	09-28-2018	Remain in Effect without Amendment
011 KAR 019:030	04-01-2011	04-01-2011	09-28-2018	Remain in Effect without Amendment
011 KAR 020:001	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:010	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:020	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:030	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:040	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:050	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:060	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 020:070	02-06-2015	02-06-2015	09-28-2018	Remain in Effect without Amendment
103 KAR 017:120	01-05-2007	01-05-2007	11-06-2018	Remain in Effect without Amendment
103 KAR 018:010	02-05-1975	02-05-1975	11-06-2018	Remain in Effect without Amendment
103 KAR 018:060	02-05-1975	02-05-1975	11-06-2018	Remain in Effect without Amendment
103 KAR 018:172	01-05-2007	01-05-2007	11-06-2018	Remain in Effect without Amendment
201 KAR 009:021	10-09-1984	02-14-2008	03-29-2018	To be Amended. Amendment filed 4-12-18
201 KAR 009:031	10-09-1984	05-05-2006	03-29-2018	To be Amended. Amendment filed 4-12-18
201 KAR 009:041	10-09-1984	11-15-2006	09-28-2018	Remain in Effect without Amendment
201 KAR 009:051	10-09-1984	03-14-1994	07-06-2018	Remain in Effect without Amendment
201 KAR 009:061	10-09-1984	03-14-1994	07-06-2018	Remain in Effect without Amendment
201 KAR 009:071	10-09-1984	10-09-1984	07-07-2018	Remain in Effect without Amendment
201 KAR 009:084	11-11-1986	02-02-2007	09-28-2018	Remain in Effect without Amendment
201 KAR 009:400	02-02-2007	02-02-2007	09-28-2018	Remain in Effect without Amendment
201 KAR 022:001	01-04-2005	06-06-2014	06-04-2018	Remain in Effect without Amendment
201 KAR 022:010	09-10-1975	12-02-1986	06-04-2018	Remain in Effect without Amendment
201 KAR 022:035	11-06-1980	05-31-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:045	01-04-2005	10-19-2016	06-04-2018	Remain in Effect without Amendment
201 KAR 022:052	06-03-1981	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:053	08-17-1990	06-02-2017	06-04-2018	Remain in Effect without Amendment
201 KAR 022:130	01-06-1983	09-18-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:135	07-02-1987	07-21-2010	06-04-2018	Remain in Effect without Amendment
201 KAR 022:140	07-02-1987	11-15-2006	06-04-2018	Remain in Effect without Amendment
201 KAR 022:150	12-19-2001	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:160	08-01-2014	08-01-2014	06-04-2018	Remain in Effect without Amendment
400 KAR 001:060	05-14-1987	05-14-1987	08-06-2018	Remain in Effect without Amendment
400 KAR 001:120	02-22-1995	08-04-2017	08-06-2018	Remain in Effect without Amendment
400 KAR 004:100	01-05-1977	10-26-1988	11-06-2018	Remain in Effect without Amendment
401 KAR 004:010	02-05-1975	08-25-2005	07-30-2018	Remain in Effect without Amendment
401 KAR 004:020	07-06-1977	07-06-1977	07-30-2018	Remain in Effect without Amendment
401 KAR 004:030	06-11-1975	06-11-1975	07-30-2018	Remain in Effect without Amendment
401 KAR 004:040	06-11-1975	06-11-1975	07-30-2018	Remain in Effect without Amendment
401 KAR 004:050	11-06-1980	11-06-1980	07-30-2018	Remain in Effect without Amendment
401 KAR 004:060	10-02-1987	03-09-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 004:070	05-05-2017	05-05-2017	07-30-2018	Remain in Effect without Amendment
401 KAR 004:200	08-07-1984	08-07-1984	07-30-2018	Remain in Effect without Amendment
401 KAR 004:220	06-26-1991	06-26-1991	07-30-2018	Remain in Effect without Amendment
401 KAR 004:300	04-28-1993	04-28-1993	07-30-2018	Remain in Effect without Amendment
401 KAR 006:001	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:200	08-07-1984	08-07-1984	09-05-2018	Remain in Effect without Amendment
401 KAR 006:310	08-13-1985	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:320	11-15-1990	10-08-2008	09-05-2018	Remain in Effect without Amendment

401 KAR 006:350	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 008:010	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:020	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:022	03-18-2002	09-25-2009	10-03-2018	Remain in Effect without Amendment
401 KAR 008:030	11-15-1990	02-05-2010	10-03-2018	Remain in Effect without Amendment
401 KAR 008:040	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:050	11-15-1990	07-06-2009	10-03-2018	Remain in Effect without Amendment
401 KAR 008:075	04-09-2001	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:100	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:150	11-15-1990	08-05-2010	10-03-2018	Remain in Effect without Amendment
401 KAR 008:200	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 008:250	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:300	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 008:700	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 009:010	08-21-2008	08-21-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 009:020	10-08-2008	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 011:001	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:010	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:020	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:030	03-06-2009	08-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:040	02-05-2010	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:050	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:060	03-06-2009	03-06-2009	11-01-2018	Remain in Effect without Amendment
401 KAR 030:005	03-12-1997	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 030:020	06-04-1980	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 030:031	06-24-1992	03-12-1997	09-05-2018	Remain in Effect without Amendment
401 KAR 030:040	06-04-1980	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 039:005	03-12-1997	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:060	12-02-1983	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:080	02-04-1986	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:090	03-10-1988	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:120	10-26-1988	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 040:001	03-12-1997	03-12-1997	10-09-2018	Remain in Effect without Amendment
401 KAR 040:010	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:020	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:040	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:060	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 042:005	11-14-1995	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:011	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:020	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:030	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:040	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:045	12-19-1990	02-05-2016	10-09-2018	Remain in Effect without Amendment
401 KAR 042:050	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:060	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:070	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:080	11-14-1995	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:090	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:095	10-06-2011	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:200	09-25-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:250	09-13-2006	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:290	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:300	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:316	05-19-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:320	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:330	07-09-1997	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:335	06-09-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:340	06-09-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 045:010	06-24-1992	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 045:020	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:025	04-28-1993	04-28-1993	09-05-2018	Remain in Effect without Amendment
401 KAR 045:030	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:040	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:050	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:060	06-24-1992	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 045:070	06-24-1992	05-05-2006	09-05-2018	Remain in Effect without Amendment
401 KAR 045:080	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:090	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:100	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment

401 KAR 045:110	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:130	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:135	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:140	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:160	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:210	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 045:250	06-24-1992	06-24-1992	09-05-2018	Remain in Effect without Amendment
401 KAR 046:101	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 046:110	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 046:120	05-05-2017	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 047:005	03-12-1997	03-12-1997	10-09-2018	Remain in Effect without Amendment
401 KAR 047:025	04-28-1993	04-28-1993	10-09-2018	Remain in Effect without Amendment
401 KAR 047:030	05-08-1990	03-18-2004	10-09-2018	Remain in Effect without Amendment
401 KAR 047:070	02-01-1982	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:080	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:090	05-08-1990	08-05-2010	10-09-2018	Remain in Effect without Amendment
401 KAR 047:095	03-19-2003	03-19-2003	10-09-2018	Remain in Effect without Amendment
401 KAR 047:100	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:110	09-08-1999	09-08-1999	10-09-2018	Remain in Effect without Amendment
401 KAR 047:120	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:130	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:136	03-13-1991	03-13-1991	10-09-2018	Remain in Effect without Amendment
401 KAR 047:140	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:150	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:160	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:170	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:180	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:190	05-08-1990	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:205	10-06-2011	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 047:207	10-06-2011	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 048:005	11-07-1994	12-07-2017	08-13-2018	Remain in Effect without Amendment
401 KAR 048:050	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:060	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:070	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:080	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:090	05-08-1990	12-07-2017	08-13-2018	Remain in Effect without Amendment
401 KAR 048:170	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:200	05-08-1990	05-08-1990	08-13-2018	Remain in Effect without Amendment
401 KAR 048:205	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:206	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:207	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:208	10-06-2011	10-06-2011	08-13-2018	Remain in Effect without Amendment
401 KAR 048:300	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:310	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:320	09-08-1999	09-08-1999	08-13-2018	Remain in Effect without Amendment
401 KAR 049:005	03-12-1997	03-12-1997	09-05-2018	Remain in Effect without Amendment
401 KAR 049:011	09-23-1992	09-08-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 049:080	01-21-2005	09-08-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 049:100	03-12-1993	03-12-1993	09-05-2018	Remain in Effect without Amendment
401 KAR 050:010	06-06-1979	11-08-2006	11-21-2018	Remain in Effect without Amendment
401 KAR 050:012	06-06-1979	11-12-1997	11-21-2018	Remain in Effect without Amendment
401 KAR 050:015	06-06-1979	10-26-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 050:020	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 050:025	06-06-1979	06-01-1983	11-21-2018	Remain in Effect without Amendment
401 KAR 050:038	11-29-1993	04-12-1995	11-21-2018	Remain in Effect without Amendment
401 KAR 050:040	06-06-1979	03-01-1984	11-21-2018	Remain in Effect without Amendment
401 KAR 050:042	06-10-1986	06-10-1986	11-21-2018	Remain in Effect without Amendment
401 KAR 050:045	06-06-1979	07-13-2005	11-21-2018	Remain in Effect without Amendment
401 KAR 050:047	06-24-1992	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 050:050	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 050:055	06-06-1979	09-22-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 050:060	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 050:065	10-11-1995	10-11-1995	11-21-2018	Remain in Effect without Amendment
401 KAR 050:066	11-12-1997	11-12-2008	11-21-2018	Remain in Effect without Amendment
401 KAR 051:001	06-24-1992	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:005	06-06-1979	06-06-1979	07-30-2018	Remain in Effect without Amendment
401 KAR 051:017	09-22-1982	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:052	09-22-1982	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:150	02-03-2006	02-03-2006	07-30-2018	Remain in Effect without Amendment

401 KAR 051:160	08-15-2001	02-03-2006	07-30-2018	Remain in Effect without Amendment
401 KAR 051:170	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:180	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:190	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:195	08-15-2001	08-15-2001	07-30-2018	Remain in Effect without Amendment
401 KAR 051:210	02-02-2007	02-02-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 051:220	02-02-2007	06-13-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 051:230	02-02-2007	02-02-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 052:001	01-15-2001	01-03-2011	09-12-2018	Remain in Effect without Amendment
401 KAR 052:020	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:030	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:040	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:060	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:090	01-15-2001	01-15-2001	09-12-2018	Remain in Effect without Amendment
401 KAR 052:100	01-15-2001	01-15-2001	09-12-2018	To be amended, file deadline 03-12-20
401 KAR 053:005	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 053:010	06-06-1979	07-19-2016	09-12-2018	Remain in Effect without Amendment
401 KAR 055:005	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 055:010	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 055:015	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 055:020	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 057:002	07-14-1999	11-14-2007	09-12-2018	Remain in Effect without Amendment
401 KAR 058:005	01-25-1989	07-07-1998	07-30-2018	To be amended, file deadline 01-03-20
401 KAR 058:010	01-25-1989	01-25-1989	07-30-2018	Remain in Effect without Amendment
401 KAR 058:025	01-07-1985	11-14-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 058:040	11-06-1987	11-06-1987	07-30-2018	Remain in Effect without Amendment
401 KAR 059:001	06-24-1992	11-08-2006	11-21-2018	Remain in Effect without Amendment
401 KAR 059:005	06-06-1979	12-01-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 059:010	06-06-1979	04-14-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 059:020	06-06-1979	11-21-2018	11-21-2018	Remain in Effect without Amendment
401 KAR 059:021	11-15-1990	11-15-1990	11-21-2018	Remain in Effect without Amendment
401 KAR 059:023	11-15-1990	11-15-1990	11-21-2018	Remain in Effect without Amendment
401 KAR 059:046	06-29-1979	06-29-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:050	06-29-1979	04-14-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 059:080	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:085	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:090	06-06-1979	06-06-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:095	06-29-1979	06-29-1979	11-21-2018	Remain in Effect without Amendment
401 KAR 059:101	06-29-1979	09-28-1994	11-21-2018	Remain in Effect without Amendment
401 KAR 059:105	06-06-1979	04-07-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 059:174	01-12-1998	03-04-2016	11-21-2018	Remain in Effect without Amendment
401 KAR 059:175	06-06-1979	02-08-1993	11-21-2018	Remain in Effect without Amendment
401 KAR 059:185	06-29-1979	01-04-2005	11-21-2018	Remain in Effect without Amendment
401 KAR 059:190	06-29-1979	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:210	06-29-1979	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:212	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:214	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:225	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:230	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:240	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:260	03-02-1983	04-01-1984	11-21-2018	Remain in Effect without Amendment
401 KAR 059:315	06-24-1992	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:760	03-11-2005	03-11-2005	11-21-2018	Remain in Effect without Amendment
401 KAR 063:001	06-24-1992	11-08-2006	09-12-2018	Remain in Effect without Amendment
401 KAR 063:005	06-06-1979	07-13-2005	09-12-2018	Remain in Effect without Amendment
401 KAR 063:010	06-29-1979	06-29-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:015	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:020	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 063:021	11-11-1986	01-19-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 063:025	06-06-1979	06-24-1992	09-12-2018	Remain in Effect without Amendment
401 KAR 063:031	08-24-1982	02-08-1993	09-12-2018	Remain in Effect without Amendment
401 KAR 063:060	11-29-1993	03-03-2017	09-12-2018	Remain in Effect without Amendment
401 KAR 065:001	11-29-1993	11-08-2006	09-12-2018	Remain in Effect without Amendment
401 KAR 065:005	06-06-1979	06-06-1979	09-12-2018	Remain in Effect without Amendment
401 KAR 068:010	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:020	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:048	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:065	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:090	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment

401 KAR 068:100	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:150	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 068:200	10-13-1999	10-13-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 100:030	03-18-2004	03-18-2004	08-13-2018	Remain in Effect without Amendment
401 KAR 101:001	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:010	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:020	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:030	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 101:040	07-06-2009	07-06-2009	08-13-2018	Remain in Effect without Amendment
401 KAR 102:005	02-03-2014	02-03-2014	08-13-2018	Remain in Effect without Amendment
401 KAR 102:010	01-14-2002	02-03-2014	08-13-2018	Remain in Effect without Amendment
401 KAR 102:020	02-03-2014	02-03-2014	08-13-2018	Remain in Effect without Amendment
402 KAR 003:010	11-13-1984	11-02-2017	07-03-2018	Remain in Effect without Amendment
402 KAR 003:020	05-19-1999	05-05-2006	07-03-2018	Remain in Effect without Amendment
402 KAR 003:030	05-19-1999	11-02-2017	07-03-2018	Remain in Effect without Amendment
402 KAR 003:040	05-05-2006	05-05-2006	07-03-2018	Remain in Effect without Amendment
402 KAR 003:050	09-03-2015	09-03-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 002:010	08-11-1982	08-11-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 005:002	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:015	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:021	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:032	08-26-2004	03-08-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 005:036	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:040	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:042	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:048	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:050	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:055	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:062	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:065	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:070	02-22-1995	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 005:078	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:082	08-26-2004	08-26-2004	07-03-2018	Remain in Effect without Amendment
405 KAR 005:085	02-22-1995	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 007:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:015	08-07-1984	12-12-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:030	02-02-1983	11-09-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 007:035	11-26-1991	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 007:040	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:050	05-04-1983	05-04-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:060	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 007:070	05-14-1985	09-10-1987	07-03-2018	Remain in Effect without Amendment
405 KAR 007:080	01-06-1983	09-28-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:095	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:097	06-09-1999	06-09-1999	07-03-2018	Remain in Effect without Amendment
405 KAR 007:100	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 007:110	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 008:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:010	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:020	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 008:030	01-06-1983	01-05-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 008:040	01-06-1983	01-05-0215	07-03-2018	Remain in Effect without Amendment
405 KAR 008:050	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 010:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 010:015	09-06-2012	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:025	12-05-2014	12-05-2014	07-03-2018	Remain in Effect without Amendment
405 KAR 010:030	01-06-1983	09-06-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 010:035	10-09-1984	10-09-1984	07-03-2018	Remain in Effect without Amendment
405 KAR 010:040	01-06-1983	04-24-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 010:050	01-06-1983	09-22-1993	07-03-2018	Remain in Effect without Amendment
405 KAR 010:070	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:080	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:090	11-07-2013	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 012:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 012:010	01-06-1983	09-22-1993	07-03-2018	Remain in Effect without Amendment
405 KAR 012:020	01-06-1983	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 012:030	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 016:010	01-06-1983	12-12-1994	07-03-2018	Remain in Effect without Amendment

405 KAR 016:020	01-06-1983	09-06-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 016:030	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:040	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:050	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:060	01-06-1983	07-07-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:070	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:080	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:090	01-06-1983	10-09-2002	07-03-2018	Remain in Effect without Amendment
405 KAR 016:100	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:110	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 016:120	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:130	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:140	01-06-1983	11-17-2009	07-03-2018	Remain in Effect without Amendment
405 KAR 016:150	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:160	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:170	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:180	01-06-1983	06-24-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 016:190	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 016:200	01-06-1983	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 016:210	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 016:220	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 016:250	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:010	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:020	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:030	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:040	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:050	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:060	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:070	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:080	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:090	01-06-1983	10-09-2002	07-03-2018	Remain in Effect without Amendment
405 KAR 018:100	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 018:110	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:120	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:130	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:140	01-06-1983	11-17-2009	07-03-2018	Remain in Effect without Amendment
405 KAR 018:150	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:160	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 018:170	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:180	01-06-1983	06-24-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 018:190	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 018:200	01-06-1983	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 018:210	01-06-1983	06-08-2001	07-03-2018	Remain in Effect without Amendment
405 KAR 018:220	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 018:230	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 018:260	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:010	01-06-1983	12-17-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 020:030	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 020:040	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 020:050	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 020:060	01-06-1983	05-22-2000	07-03-2018	Remain in Effect without Amendment
405 KAR 020:070	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 020:080	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:090	01-05-2018	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 024:001	04-03-1992	04-03-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 024:020	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 024:030	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 024:040	01-06-1983	06-28-1989	07-03-2018	Remain in Effect without Amendment
405 KAR 026:001	01-06-1983	01-06-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:010	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:015	08-07-1984	08-07-1984	07-03-2018	Remain in Effect without Amendment
405 KAR 030:020	03-01-1982	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:025	06-25-1983	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:035	06-25-1982	06-25-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:040	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:050	06-02-1982	06-02-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:060	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment

405 KAR 030:070	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:080	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:090	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:100	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:110	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:121	06-02-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:125	06-02-1982	06-02-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:130	08-02-1981	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:140	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:150	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:160	11-02-1983	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:170	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:180	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:210	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:220	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:230	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:240	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:250	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:260	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:270	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:280	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:290	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:300	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:310	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:320	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:330	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:340	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:350	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:360	11-02-1983	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:370	10-05-1983	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:390	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:400	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
405 KAR 030:410	03-01-1982	03-01-1982	07-03-2018	Remain in Effect without Amendment
600 KAR 006:080	04-05-1996	01-25-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 001:019	07-06-2012	07-06-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 001:200	09-03-1996	08-06-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 001:201	03-02-1999	09-07-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 001:220	05-07-2010	05-07-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 002:020	09-01-1998	08-10-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 009:015	05-14-1975	11-05-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 009:090	01-04-1984	11-02-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 009:160	05-23-1994	03-14-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 009:205	01-03-2011	01-03-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 009:210	12-19-2001	04-01-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 011:035	10-04-2011	10-04-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 012:060	10-01-1991	07-02-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 014:030	11-05-2010	11-05-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 023:010	02-05-2010	02-05-2010	10-08-2018	Remain in Effect without Amendment
603 KAR 004:035	11-03-1982	02-15-2012	10-08-2018	Remain in Effect without Amendment
603 KAR 007:080	01-25-2012	01-25-2012	10-08-2018	Remain in Effect without Amendment
701 KAR 005:055	08-04-1994	12-05-1996	11-16-2018	Remain in Effect without Amendment
701 KAR 005:080	03-13-1991	03-13-1991	11-16-2018	Remain in Effect without Amendment
701 KAR 005:090	09-06-1991	11-12-2002	11-16-2018	Remain in Effect without Amendment
701 KAR 005:100	09-06-1991	06-01-1995	11-16-2018	Remain in Effect without Amendment
701 KAR 005:120	01-19-1999	01-19-1999	11-16-2018	Remain in Effect without Amendment
701 KAR 005:130	03-07-2008	03-07-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 001:035	03-02-1977	07-15-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 001:080	03-10-1976	12-05-1996	11-16-2018	Remain in Effect without Amendment
702 KAR 001:100	02-02-1977	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 001:140	07-06-1995	07-06-1995	11-16-2018	Remain in Effect without Amendment
702 KAR 001:150	01-15-2001	03-19-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 003:020	11-13-1974	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:030	11-13-1974	07-02-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 003:045	03-12-1975	08-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 003:050	03-12-1975	12-09-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 003:060	11-03-1974	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 003:070	03-12-1975	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:075	11-13-1974	11-01-1999	11-16-2018	Remain in Effect without Amendment
702 KAR 003:080	11-13-1975	01-05-2009	11-16-2018	Remain in Effect without Amendment

702 KAR 003:090	11-13-1975	06-08-2009	11-16-2018	Remain in Effect without Amendment
702 KAR 003:135	10-01-1980	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:150	11-13-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 003:190	10-09-1984	09-02-1993	11-16-2018	Remain in Effect without Amendment
702 KAR 003:246	02-12-1996	01-03-2011	11-16-2018	Remain in Effect without Amendment
702 KAR 003:250	09-06-1991	10-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 003:270	12-01-1994	09-08-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 003:275	02-02-1995	02-02-1995	11-16-2018	Remain in Effect without Amendment
702 KAR 003:285	01-09-1997	01-09-1997	11-16-2018	Remain in Effect without Amendment
702 KAR 003:310	02-03-2003	02-03-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 004:005	06-11-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:050	10-08-1975	03-07-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 004:090	06-11-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:100	12-10-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:170	03-02-1995	03-02-1995	11-16-2018	Remain in Effect without Amendment
702 KAR 004:180	10-06-1991	07-07-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 005:010	06-11-1975	12-01-2006	11-16-2018	Remain in Effect without Amendment
702 KAR 005:020	10-08-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:060	06-11-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:080	03-16-1998	01-04-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 005:100	06-11-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:120	01-05-1977	10-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 005:130	06-04-1985	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 005:150	12-07-1990	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 006:010	10-02-1974	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:020	03-12-1975	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:040	03-12-1975	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:045	03-23-1989	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:050	10-02-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 006:060	03-12-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 006:075	10-14-1990	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 007:130	01-05-2009	10-06-2010	11-16-2018	Remain in Effect without Amendment
703 KAR 003:205	09-02-1993	12-05-1996	11-16-2018	Remain in Effect without Amendment
704 KAR 003:285	07-05-1978	09-01-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:307	04-01-1981	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 003:325	10-09-1994	02-03-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 003:406	08-04-1994	08-04-1994	11-16-2018	Remain in Effect without Amendment
704 KAR 003:410	12-09-1990	06-07-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:420	06-07-1999	06-07-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:440	08-01-1992	08-01-1992	11-16-2018	Remain in Effect without Amendment
704 KAR 003:455	01-09-1995	03-19-2003	11-16-2018	Remain in Effect without Amendment
704 KAR 003:480	03-01-1999	03-01-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:490	01-15-2001	08-07-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 003:500	11-05-2001	11-05-2001	11-16-2018	Remain in Effect without Amendment
704 KAR 003:510	03-19-2003	03-19-2003	11-16-2018	Remain in Effect without Amendment
704 KAR 003:530	08-07-2006	08-07-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 004:010	11-13-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 005:060	12-02-1988	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 007:070	12-02-1986	01-19-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 007:120	10-07-1993	04-22-2005	11-16-2018	Remain in Effect without Amendment
704 KAR 007:130	09-04-1997	06-08-2001	11-16-2018	Remain in Effect without Amendment
704 KAR 007:140	01-16-2003	11-08-2004	11-16-2018	Remain in Effect without Amendment
704 KAR 010:022	11-03-1976	10-08-1989	11-16-2018	Remain in Effect without Amendment
705 KAR 003:141	08-04-1994	08-04-1994	11-16-2018	Remain in Effect without Amendment
705 KAR 004:081	08-04-1994	08-04-1994	11-16-2018	Remain in Effect without Amendment
705 KAR 004:240	01-19-1999	01-19-1999	11-16-2018	Remain in Effect without Amendment
707 KAR 001:270	03-01-1999	03-01-1999	11-16-2018	Remain in Effect without Amendment
707 KAR 001:290	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:300	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:320	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:350	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:360	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:370	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:380	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
780 KAR 001:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:030	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:110	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment

780 KAR 003:020	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:030	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:035	09-11-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:040	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:060	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:065	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:075	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:090	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:100	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:110	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:150	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:160	07-05-1991	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:005	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:010	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:020	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:030	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:040	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:050	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:062	07-17-2000	01-04-2010	11-16-2018	Remain in Effect without Amendment
780 KAR 006:065	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:070	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:080	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:090	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:100	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 007:020	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 007:040	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
805 KAR 001:020	08-02-1978	09-25-1991	07-03-2018	Remain in Effect without Amendment
805 KAR 001:030	11-13-1975	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:040	04-09-1975	04-09-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:050	04-09-1975	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:060	06-11-1975	12-07-2017	06-27-2018	Remain in Effect without Amendment
805 KAR 001:080	06-11-1975	06-11-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:100	08-13-1975	09-03-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:110	09-01-1984	04-04-2008	06-27-2018	Remain in Effect without Amendment
805 KAR 001:120	09-25-1991	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:130	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:140	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:160	07-09-1997	07-09-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:170	07-09-1997	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:180	11-12-1997	11-12-1997	06-27-2018	Remain in Effect without Amendment
805 KAR 001:190	03-18-2004	11-17-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:200	10-23-2009	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 002:010	12-11-1974	12-11-1974	06-27-2018	Remain in Effect without Amendment
805 KAR 003:010	05-14-1975	09-22-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 003:020	05-14-1975	07-09-1985	06-27-2018	Remain in Effect without Amendment
805 KAR 003:030	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:040	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:060	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:070	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:080	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:090	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:100	05-14-1975	02-05-2016	06-27-2018	Remain in Effect without Amendment
805 KAR 003:110	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 003:120	05-14-1975	05-14-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:005	09-01-1976	06-07-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 004:010	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:020	07-02-1975	07-02-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 004:030	07-02-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:040	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:050	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:060	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:075	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:080	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:085	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:087	03-02-1977	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:090	09-01-1976	09-07-1983	06-27-2018	Remain in Effect without Amendment
805 KAR 004:093	12-11-1996	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:095	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:100	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment

805 KAR 004:105	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:110	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:115	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:120	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:125	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:130	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:135	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:140	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:145	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:150	09-01-1976	09-01-1976	06-27-2018	Remain in Effect without Amendment
805 KAR 004:155	06-26-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:160	06-27-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:165	06-28-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 005:010	09-01-1976	10-14-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 005:030	11-09-1992	12-11-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 005:070	12-11-1996	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 007:010	10-05-1977	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 007:020	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:030	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:040	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:050	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:060	07-05-1978	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:070	02-07-1979	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:080	12-11-1996	03-06-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 007:090	10-13-1999	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:100	08-06-2007	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 008:010	09-16-2002	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 008:030	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:040	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:050	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:060	09-16-2002	09-02-2010	06-27-2018	Remain in Effect without Amendment
805 KAR 009:010	06-08-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:020	06-09-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:030	06-10-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:050	06-11-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:060	06-12-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:070	06-13-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:080	06-14-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:090	06-15-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:100	06-16-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 011:001	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 011:010	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 011:020	08-23-2007	08-23-2007	06-27-2018	Remain in Effect without Amendment
825 KAR 001:020	06-14-2002	12-07-2006	08-06-2018	Remain in Effect without Amendment
825 KAR 001:030	11-12-2002	11-12-2002	08-06-2018	Remain in Effect without Amendment
900 KAR 006:040	12-18-1996	12-18-1996	07-30-2018	Remain in Effect without Amendment
907 KAR 001:260	06-28-1984	01-10-1992	07-23-2018	Remain in Effect without Amendment
907 KAR 001:680	07-26-1995	07-16-2003	07-23-2018	Remain in Effect without Amendment
907 KAR 001:720	11-14-1997	08-12-2002	07-23-2018	Remain in Effect without Amendment
907 KAR 001:755	04-21-1999	04-21-1999	07-23-2018	Remain in Effect without Amendment
907 KAR 001:780	08-18-1999	08-18-1999	07-23-2018	Remain in Effect without Amendment
907 KAR 003:100	08-16-1999	12-02-2010	07-23-2018	Remain in Effect without Amendment
907 KAR 003:125	03-06-2001	01-05-2007	07-23-2018	Remain in Effect without Amendment
907 KAR 003:225	11-01-2013	11-01-2013	07-23-2018	Remain in Effect without Amendment
907 KAR 003:230	11-01-2013	11-01-2013	07-23-2018	Remain in Effect without Amendment
907 KAR 005:005	11-05-2010	11-05-2010	07-23-2018	Remain in Effect without Amendment
907 KAR 006:005	05-06-2011	05-06-2011	07-23-2018	Remain in Effect without Amendment
907 KAR 010:815	06-06-2008	06-06-2008	07-23-2018	Remain in Effect without Amendment
907 KAR 014:005	10-21-2009	01-14-2013	07-23-2018	Remain in Effect without Amendment
910 KAR 001:200	01-10-1992	04-01-2011	08-10-2018	Remain in Effect without Amendment
910 KAR 001:260	12-01-2006	12-11-2012	08-10-2018	Remain in Effect without Amendment
910 KAR 003:020	05-01-2009	05-01-2009	08-10-2018	Remain in Effect without Amendment
920 KAR 001:060	08-18-1999	03-01-2007	07-23-2018	Remain in Effect without Amendment

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*.These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), or 13A.312(2), or 13A.320(1)(d).Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http:--www.lrc.ky.gov-KAR-frntpage.htm.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

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016 KAR 009:040	09-12-2018		
020 KAR 001:010	08-14-2018		
103 KAR 001:010	09-12-2018		
103 KAR 016:320	07-16-2018		
103 KAR 018:020	07-16-2018		
103 KAR 018:090	07-16-2018		
104 KAR 001:020	09-12-2018		
104 KAR 001:040	09-12-2018		
200 KAR 005:365	09-12-2018		
200 KAR 012:030	09-12-2018		
201 KAR 046:081	09-28-2018		
301 KAR 002:132	09-12-2018		
401 KAR 039:005	07-09-2018		
401 KAR 045:020	10-15-2018		
401 KAR 045:025	10-15-2018		
401 KAR 045:030	10-15-2018		
401 KAR 045:090	10-15-2018		
401 KAR 045:130	10-15-2018		
401 KAR 045:250	10-15-2018		
401 KAR 048:090	10-15-2018		
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401 KAR 048:300	10-15-2018		
401 KAR 048:310	10-15-2018		
703 KAR 005:280	09-10-2018		
804 KAR 004:370	08-01-2018		
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900 KAR 006:040	08-02-2018		
900 KAR 011:010	07-13-2018		
902 KAR 030:180	07-18-2018		
902 KAR 048:020	09-13-2018		
902 KAR 048:030	09-13-2018		
907 KAR 017:020	06-05-2018		
908 KAR 002:250	09-17-2018		
910 KAR 001:240	09-17-2018		
920 KAR 001:060	07-25-2018		
921 KAR 001:400	08-22-2018		
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