

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 33, NUMBER 12  
FRIDAY, JUNE 1, 2007

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**MEETING NOTICE: ARRS**

The Administrative Regulation Review Subcommittee is **ten-**  
**tatively** scheduled to meet June 7, 2007 at 10 a.m. in room 149  
Capitol Annex. See **tentative agenda** on pages 3583-3584 of this  
Administrative Register.

Part 3 of 3

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**KENTUCKY ADMINISTRATIVE REGULATIONS** are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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

### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department of Public Protection  
Office of Housing, Buildings and Construction  
Division of Building Code Enforcement  
(Amended After Comments)

815 KAR 7:125. Kentucky Residential Code~~[2002]~~.

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990  
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "~~Executive director~~[Commissioner]" is defined by KRS 198B.010(9).

(4) "~~Office~~[Department]" is defined by KRS 198B.010(11).

(5) "Executive director" means the Executive Director of the Office of Housing, Buildings and Construction.

(6) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) which is qualified by and registered with the property valuation administrator in the county in which the property is located.

(7) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(8) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(9) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(10) "Office" means the Office of Housing, Buildings and Construction.

(11) "Ordinary repair" is defined by KRS 198B.010(19).

(12) "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.

(13) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(14) "Two (2) family dwelling" means a building containing not more than two (2) family dwelling units which are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling or townhouse shall not be constructed unless it is in compliance with the International Residential Code, ~~2006~~ [2000] as amended by this administrative regulation and the ~~2007~~ [2003] Kentucky Residential Code [Supplement].

(2) Exceptions.

(a) Permits, inspections and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family or townhouses shall comply with the Kentucky Building Code, ~~2006~~ [2002] as set forth in 815 KAR 7:120.

(3) The International Residential Code shall be amended as

set forth in the ~~2007~~ [2003] Kentucky Residential Code [Supplement].

(4) Effective dates. Plans for single-family or one (1) family dwellings, two (2) family dwellings and townhouses shall be designed and submitted to conform to this administrative regulation.

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

(a) "International Residential Code ~~2006~~[2000]", [First Edition], International Code Council, Inc.; [and]

(b) "~~2007~~ [2003] Kentucky Residential Code", May 15, 2007; and

(c) FEMA 232, June 2006.

~~(2) [Supplement], January 15, 2003, as amended March 2005.~~

~~(2) The International Residential Code is published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401.~~

~~(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.~~

FLOYD VAN COOK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 10 a.m.

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David L. Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the building construction requirements for one and two family dwellings and townhouses.

(b) The necessity of this administrative regulation: This administrative regulation established the Kentucky Residential Code as part of the Uniform State Building Code as required pursuant to KRS 198B.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This is the portion of the uniform mandatory statewide building code for single family dwellings as authorized by KRS Chapter 198B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation contains all the enforcement requirements and technical standards for small residential construction.

(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: Will eliminate the confusion and questions regarding the thickness of stem wall portion of concrete foundations above grade and that have no lateral pressures on them and provides a convenient resource for the basic principles of seismic resistant construction.

(b) The necessity of the amendment to this regulation: Provide a structurally sound alternative to the existing design of concrete foundation walls and the FEMA 232 Guide will be an alternative to the code.

(c) How the amendment conforms to the content of the authorizing statute: KRS 198B.050 requires the adoption of a uniform state building code and its continuing review and modification.

(d) How the amendment will assist in the effective administration of the statutes: Will provide amendments to the 2003 Kentucky Residential Code which have been approved by the Kentucky Board of Housing, Buildings and Construction.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: Home builders and purchasers as well as local governments, but only if they elect to have a building inspection program for single family dwellings.

(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 comply with this administrative regulation or amendment: The referenced entities will have to modify their respective building activities to conform to the new code requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not anticipated to increase the cost of home building or inspection. The new code simply incorporates up-to-date building standards. Increased construction cost, if there are any, should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by employing updated construction practices which are believed to result in safer houses.

(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: It will provide an alternative guide (FEMA 232, 2006) and a structurally sound alternative for concrete foundation walls.

(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: None

(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? Tiering is not applied.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local governments that have a residential inspection program will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.080 and KRS 198B.050.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures or revenue for the first full year. The Kentucky Residential Code is currently being enforced, and this regulatory amendment establishes no new costs or fees.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no effect on 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? There will be no effect on revenue for subsequent years.

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

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

program for subsequent years.

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

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

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department of Public Protection  
Office of Housing, Buildings and Construction  
Division of Plumbing  
(Amended After Comments)**

**815 KAR 20:078. Storage and installation of SDR 11, CPVC plastic pipe and fittings.**

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The office [department] is directed by KRS 318.130 [through the State Plumbing Code Committee] to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the method needed for storage, handling and installation of standard dimension ratio (SDR) 11, chlorinated polyvinyl chloride [poly(vinyl chloride)] (CPVC) plastic pipe and fittings. [This administrative regulation is being amended to allow the use of a newly developed product that has been deemed equal to that which has been required in the past.]

Section 1. Storage and Handling. (1) Chlorinated polyvinyl chloride [poly(vinyl chloride)] (CPVC) pipe, tubing and fittings shall be stored under cover to avoid unnecessary dirt accumulation and long-term exposure to sunlight. Pipe and tubing shall be stored with continuous support in straight, uncrossed bundles. Care shall be used in handling to avoid unnecessary abuse such as abrasion on concrete or crushing.

(2) Solvent cement and primers, because of flammability, shall be stored in an area where there shall be no exposure to ignition, sparks, open flames or heat. Solvent cement and primers shall not be used beyond their marked shelf life.

Section 2. Installation. (1) Correct assembly shall consist of the following steps:

- (a) Cut the pipe square;
- (b) Remove burrs;
- (c) Clean both pipe end and fitting socket with a recommended CPVC cleaner, unless using an approved one (1) step cement;
- (d) Apply a liberal coat of CPVC solvent cement to the pipe and apply a light coat of cement to the fitting socket; removing all excess cement from the interior which may clog the waterway;
- (e) Assemble immediately by bottoming the pipe in the socket and rotating one-quarter (1/4) turn as the joint is assembled; and
- (f) Remove excess cement from the joint.

(2) To determine if a joint has been properly assembled, a small bead of cement shall appear at the junction between the pipe or tubing and the fitting.

Section 3. Installation Temperature. Extra care shall be taken if installing in temperatures below forty (40) degrees Fahrenheit or above 110 degrees Fahrenheit. The manufacturer's installation instructions shall be followed carefully.

Section 4. Hangers and Supports. Support shall be provided at each floor level for piping installed in vertical runs. For horizontal runs, support shall be provided at three (3) foot intervals for pipe one (1) inch or less in diameter and at four (4) foot intervals for larger pipe sizes. Piping shall not be anchored tightly to a support but secured with smooth straps or hangers allowing for movement caused by expansion and contraction. Hangers shall not have rough or sharp edges that come in contact with the piping.

Section 5. CPVC-to-metal Transitions. CPVC threaded adapt-

ers shall not be used to transition to metal. Union type fittings which use gaskets or o-rings to seal dissimilar connections shall not be used. [Only fittings produced with brass threads can be used to transition to metal. Union type fittings which include gaskets or o-rings, or both shall not be used.] Compression type transition fittings, over-molded transition fittings and push-type fittings meeting the ASSE 1061 standard [which include ferrules] may be used. [Assembly shall be in accordance with the manufacturer's instructions. Union and compression type transition fittings may include ferrules or o-rings, or both, which form an essential part of the fitting assembly and shall not be omitted. Plastic socket-to-male threaded adapters shall be installed with a manufacturer's recommended thread sealant.]

Section 6. Thermal Expansion. The linear thermal expansion rate for CPVC is approximately one-half (1/2) inch for each ten (10) degrees Fahrenheit temperature change for each 100 feet of pipe or tubing. When installing long runs of pipe, allow one-sixteenth (1/16) to three thirty-seconds (3/32) inch longitudinal clearance per foot of run to accommodate thermal expansion. Proper design includes offsets of twelve (12) inches or more every ten (10) feet on vertical risers if they are restrained by horizontal branches at each floor. Piping shall not be anchored tightly to a support but secured with broad, smooth hangers allowing for any movement caused by expansion and contraction.

FLOYD VAN COOK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 10 a.m.

CONTACT PERSON: David Reichert, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Reichert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes standards for the storage, handling and installation of chlorinated polyvinyl chloride (CPVC) plastic pipe and fittings.

(b) The necessity of this administrative regulation: This regulation establishes standards for the use of CPVC to ensure compliance with the Kentucky State Plumbing Code and allows for use of newly developed products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 allows for the approval of new products as well as standards for construction, installation or alteration of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes standards for the use of CPVC in construction, installation or alteration of plumbing and plumbing fixtures.

(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 allows for the use of a newly developed product and removes a previously approved class of products when used in a transition from CPVC to metal.

(b) The necessity of the amendment to this administrative regulation: This amendment allows for the use of a newly developed product and removes a previously approved class of products when used in a transition from CPVC to metal. The previously approved class can result in failure if used to connect dissimilar assemblies.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 allows for periodic amendment of the Kentucky State Plumbing Code. KRS 318.130 allows for the approval of new products as well as standards for construction, installation or alteration of plumbing and plumbing fixtures.

(d) How the amendment will assist in the effective administration of the statutes: KRS 318.130 allows for the approval of new products as well as standards for construction, installation or alteration of plumbing and plumbing fixtures. This amendment allows

for a new technology while replacing a product that is subject to failure under certain circumstances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed plumbers and those doing business with plumbers will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed plumbers will have to conform their practices of transitioning from CPVC to metal. It specifies which fittings may be used.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The different type of fitting is not expected to increase costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit of the regulation change is that the new standard addresses a deficiency by a certain type product while specifying permissible fittings.

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

(a) Initially: There should be no initial cost associated with the implementation of this administrative regulation.

(b) On a continuing basis: There should be no ongoing cost associated with 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: Agency funds and existing staff will be used for 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: There should not be an increase in fees or funding associated with the change to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All licensed plumbers are treated equally and have equal access to the new products under the Kentucky State Plumbing Code.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Housing, Buildings and Construction, Division of Plumbing, and any local government that conducts plumbing inspections will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulatory amendment will have no impact on expenditures or revenues.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

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fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to the approved parts and materials list for use by plumbers.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MAY 15, 2007

PERSONNEL CABINET  
(Amendment)

101 KAR 2:046. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030(2), 18A.032, 18A.110(1)(a), (7)(c), 18A.120, 18A.150

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(a), (7)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(a) and (7)(c) requires the Secretary of Personnel to promulgate administrative regulations which govern open competitive exams to determine [test] the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the secretary. This administrative regulation establishes the application and examination requirements.

Section 1. Notices of Examinations. (1) An examination for entrance to the classified service shall be conducted on an open-competitive basis.

~~(2) [For a job classification in which there is expected to be a considerable and recurring need of eligibles, the secretary shall establish a recruitment program which shall be both positive and continuous.]~~

~~(3)~~ The recruitment program shall:

(a) Accept an application in an appropriate format designated by the secretary [at any time]; and

(b) Hold an examination whenever and wherever the secretary deems it to be in the best interests of the Merit System.

~~(3)~~ ~~[(4) If continuous recruitment is not needed, a special announcement shall be used.]~~

~~(5)~~ Eligibles shall be listed in rank order upon certification of a register based on their highest valid scores [of score without respect to the date on which the examination was taken].

~~(4)~~ ~~(6)~~ Notice of examinations shall be announced publicly at least ten (10) calendar days prior to the certification of the register. An application shall be accepted up to the date prior to certification of the register.

~~(5)~~ ~~(7)~~ Examinations may be advertised through the press, radio and other media.

~~(6)~~ ~~(9)~~ The public notice of examination required by KRS 18A.110(7)(c) shall specify:

(a) The title and minimum salary of the job classification;

(b) The minimum qualifications required;

(c) The opening date on which an application will be received for placement of the applicant on the register; and

~~(d) [The relative weights to be assigned to different parts of the examination; and~~

~~(e)] All other pertinent information and requirements.~~

Section 2. Minimum Qualifications for Filing Applications. An open-competitive examination shall be available [open] to each applicant who self-nominates to meeting minimum requirements determined [meets the standards or requirements fixed] by the secretary with regard to:

(1) Education;

(2) Experience;

(3) Training;

(4) licensure;

(5) Certification; or

(6) Other factors that relate to the ability of the candidate to perform the essential functions of the position with reasonable efficiency.

Section 3. Filing Applications. (1) An application shall be submitted in an appropriate format as designated by the secretary [on an Application for Employment or Application Update, whichever is appropriate].

(2) An application shall require information concerning:

(a) Personal characteristics;

(b) Education;

(c) Experience;

(d) References; and

(e) Other pertinent information.

(3) An application shall be signed by the applicant personally or by electronic means. The truth of the statements contained in the application shall be certified by the applicant's signature.

(4) An applicant shall:

(a) Meet the minimum qualifications established in the class specification as to education and experience; and

(b) Not be guaranteed a passing grade by admission to an examination.

(5) For a job classification for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that an application shall be received until further notice.

~~[(6) If a special announcement bulletin is used, an applicant shall have at least ten (10) calendar days from the date of the announcement to apply and test for an opening.]~~

Section 4. Advance Examinations. (1) If an applicant does not meet the minimum requirements as to education at the time of application, but will meet these requirements as a result of the completion of currently scheduled educational work in within three (3) months following the date of receipt of application, the applicant [he] shall be allowed to take the examination with the approval of the secretary.

(2) An applicant taking the examination under subsection (1) of this section shall be eligible for self-nominating to a specific vacancy announcement [have his name entered on the register] up to thirty (30) calendar days prior to completing the educational requirements.

Section 5. Character of Examinations. An examination shall:

(1) Be practical in nature;

(2) Be constructed to reveal the capacity of the candidate for the particular job classification for which the applicant [he] is competing;

(3) Consider the applicant's general background and related knowledge; and

(4) Be rated impartially.

Section 6. Conduct of Examinations. (1) An examination shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) Reasonable accommodation in testing shall be provided upon timely request and receipt of verification of need.

(3) The secretary may [designate]:

~~(a)~~ Designate monitors in various parts of the Commonwealth to:

~~(a)~~ conduct an examination under instructions prescribed by the secretary;

~~(b)~~ Provide for the compensation of the monitors; and

~~(c)~~ Make arrangements for the use of a public building in which to conduct an examination.

(4) Retest procedures.

(a) For open continuous testing, an applicant shall not:

1. Be admitted to the same exam or its alternate more than two (2) times within a regular workweek; or

2. Take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date the test is taken.

~~[(b) An eligible, who is removed from a register for failure to report to an appointing authority or appointing authority's designee for consideration or declines appointment by an appointing authority shall not be allowed to retest for the job class from which the eligible was removed for three (3) months from the date of removal unless restored for reasons satisfactory to the secretary or in accordance with the decision of the Personnel Board on appeal.]~~

Section 7. Rating Examinations. (1) The secretary shall determine the rating or standing of an applicant on the register for each examination at the time of certification of a register.

(2) The secretary shall determine the passing score of each [A

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final rating shall be based upon a weighted average of the various parts of the total examination.

(3) All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) If the selection method is rating of education and experience [~~forms a part of the total examination~~], the secretary shall determine a procedure for the evaluation of the education and experience qualifications of an applicant.

(2) The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinence of the education.

(3) The secretary shall investigate the candidate's educational documentation.

(4) The secretary may investigate the candidate's work history.

(5) If the results of this investigation disclose information affecting the rating of education and experience, the secretary shall:

(a) Rate the candidate accordingly;

(b) Make the necessary revision of the rating; and

(c) Notify the candidate.

(6) [~~If the knowledge, skills and abilities necessary for a job classification cannot be accurately measured by written, performance, or training and experience examination.~~] The secretary may determine the selection method for a job [the] classification based upon the knowledge, skills, and abilities necessary for the classification [~~to be "qualifying"~~].

(a) [~~If a classification is determined to be qualifying~~] The secretary shall notify the Personnel Board of the classification and its [the] minimum requirements for a qualifying selection method.

(b) The secretary shall maintain for public review a list of those classifications which are qualifying along with the minimum requirements for each classification.

Section 9. [~~Oral Examinations.~~] (1) ~~If an oral examination forms a part of the total examination for a position, the secretary shall appoint one (1) or more oral examination panels as needed.~~

(2) ~~An oral examination panel shall:~~

(a) ~~Consist of three (3) or more members known to be interested in the improvement of public administration and in the selection of efficient government personnel; and~~

(b) ~~Including one (1) member who is technically familiar with the character of work in the position for which an applicant shall be examined.~~

(3) ~~If practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel.~~

(4) ~~A member of an oral examination panel shall:~~

(a) ~~Disclose each instance in which the member knows the applicant personally; and~~

(b) ~~Shall refrain from rating that applicant.~~

Section 10. [~~Notice of Examination Results.~~] (1) Each applicant shall be notified of the examination score [final rating] as soon as the rating of the examination has been completed.

(2) An eligible shall be entitled to information concerning his relative position on the register upon request and presentation of proper identification.

Section 10. [~~44.~~] Adjustment of Errors. (1) The secretary shall correct a clerical error in the rating of an examination, if the error is called to the attention of the secretary within thirty (30) days after receipt of the notice of examination results.

(2) A correction shall not invalidate a certification and appointment previously made.

Section 11. [~~42.~~] Examination Records. The secretary shall maintain all records pertinent to an application or examination for a period of three (3) years.

Section 12. [~~43.~~] Incorporation by Reference. (1) [~~The following material is incorporated by reference:~~

(a) "Application for Employment", is incorporated by refer-

ence, [~~Form P-2, September 1999; and~~

(b) "Application Update", September 1999.]

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BRAIN J. CRALL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007 at 10 a.m. at 200 Fair Oaks Lane, Room 508, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007 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 July 2, 2007. 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: Thomas B. Stephens, Office of Legal Services, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, phone 502 564-7430, fax 502 564-7603.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Thomas Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the application and examination requirements for state employment.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the Career Opportunities System component of the Kentucky Human Resource Information System (hereinafter "KHRIS") project currently underway. These updates allow the Personnel Cabinet to accommodate the transition to an on-line application process whereby interested applicants apply electronically for vacant positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines how applicants will apply for vacant positions in state employment, explains the rating or standing of an applicant for registers of tested classifications and removes the language of oral examinations which is not utilized by the cabinet.

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

(a) How the amendment will change this existing administrative regulation;

1. Provides flexibility as to the medium and format of state applications that is acceptable for the recruitment program;

2. Provides for the ranking of applicants for tested positions to be completed upon certification of the register;

3. Provides for the ability of applicants to self-nominate to a vacant position;

4. Eliminates the amount of time an applicant cannot test for a position when restored to the applicant pool by the Personnel Board or by the secretary; and

5. Eliminate the oral examination selection method which is not used by the Personnel Cabinet; and

(b) The necessity of the amendment to this administrative regulation: The current recruitment process effectively requires applicants to drive to Frankfort to apply for a position. Although, applications are received via e-mail and by U. S. mail, practical administration lends itself to give priority service given to those

applicants who apply in person. This process places an unfair burden on citizens who live far from Frankfort. For example, a person may drive four hours from Paducah to Frankfort to apply for a job within a few miles of their home. The current regulation and administrative processes do not allow applicants to actively and selectively seek employment in a job of interest. Certified registers contain applicants who may have been seeking employment up to one to two years ago and are no longer interested in any open position. Commonwealth agencies are unable to effectively work registers to complete the process needed to fill critical positions in a timely manner. The Personnel Cabinet recognizes the ineffectiveness of the current process as the regulation currently exists. The cabinet sought and received authorization for KHRIS as a Capital Project by the 2004 General Assembly. In order to fully implement the vision of KHRIS, it is essential to change the recruitment environment to meet the needs of state government. This amendment provides the administrative authority to change the environment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(a) and (7)(c). Applicants can continue to submit and continuously update their application via Career Opportunities and apply to positions of interest.

(d) How the amendment will assist in the effective administration of the statutes: The amendment eliminates any misunderstanding of applicants that qualifying for a classification implies that a position is open. The amendment will allow the cabinet to receive applications via an on-line system and provide interested, qualified applicants to Commonwealth agencies via a certified register.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies are affected by this 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: Applicants will access the Personnel Cabinet's web site to apply for state employment. The Personnel Cabinet will provide a web site in order to receive applications for employment. The Commonwealth's Executive Branch agencies will have no additional actions required as a result of this regulation amendment.

(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 each of the entities identified in question (3). It is anticipated that this regulation amendment will result in a cost savings to applicants because they will no longer need to travel to Frankfort to apply for a position, the Personnel Cabinet will no longer process applications for which jobs are not vacant; and the agencies will no longer consider applicants who are uninterested in the vacancy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet has determined this will create a more positive state employment process by eliminating the need for applicants to drive to Frankfort to apply for state employment. We currently see 60,000 applicants per year for approximately 4000 appointments. The majority of applicants are applying for an open position. The cabinet has spent numerous hours engaging state agencies and employee representatives and has received overwhelmingly positive response to this amendment.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs. It is anticipated that this amendment will reduce costs to the cabinet and to the agency in that they will not spend time reviewing applications for applicants uninterested in their position.

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

regulation, as amended, is not anticipated to generate any new or additional costs, however, if any costs are associated with this amendment, the costs will be born by the Personnel Cabinet.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110 (1)(d) and KRS 18A.030.

4. 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 cost to administer the current recruitment program is approximately \$2.7M per fiscal year. It is not anticipated that this cost will increase during the first year.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program should not exceed normal growth patterns for state government. It is anticipated that there may be a cost savings in the agencies as the new system allows for a more efficient recruitment process.

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:

PERSONNEL CABINET  
(Amendment)

101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110(1)(f), (7) 18A.120  
STATUTORY AUTHORITY: KRS 18A.030(2), 18A.040, 18A.110(1)(f), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(f) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the secretary. This administrative regulation establishes requirements for the state registers.

Section 1. Notification of [Register] Vacancies to Be Filed From a Register. An appointing authority shall notify the secretary, in an



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~~appropriate format as designated by the secretary, [on the prescribed Request for Certification Forms P-7 and P-7(a),] as far in advance as possible of a vacancy in a full-time or part-time classified position to be filled from a register.~~

### Section 2. Minimum Requirements. [~~Use of Related Registers.~~]

(1) ~~The secretary may review the qualifications of additional applicants who meet the minimum requirements when there are insufficient interested eligibles for a vacancy. [select a register from a job classification for which the minimum qualifications are comparable to or higher than those required for the job classification in which a vacancy exists if there is an inadequate or insufficient register available.]~~

(2) The secretary may, if appropriate, reevaluate [rate] an applicant's training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

~~Section 3. Duration of Registers. (1) [If a register becomes so depleted that the preparation of usable certificates for a major portion of the current vacancies in a particular job classification is impracticable, the register shall be considered exhausted.~~

~~(2) A register which has become exhausted shall expire upon the administration of a superseding examination and the establishment of a register on the basis of that examination.~~

~~(2) [(3)] If a new examination is established for a classification [class], the secretary shall send to each eligible remaining on the current register a notification prior to the administration of a superseding examination.~~

~~Section 4. [Replenishment of Registers. If the secretary determines that a register, although not exhausted, is inadequate for the filling of an anticipated vacancy, the secretary may announce an open competitive examination for the purpose of replenishing the register.~~

~~Section 5.] Internal Mobility Program. The internal mobility program shall facilitate the movement of a qualified classified employee to a different position [in a different class] in the state personnel system.~~

(1) The secretary shall certify [maintain] a full-time or [and] part-time register which shall include:

(a) The names of eligibles for reemployment and appointment, in accordance with 101 KAR 2:066; and

(b) The names of interested employees with full-time, part-time, or internal mobility status who:

1. Meet the minimum requirements; [and]

2. Seek promotion, demotion, or transfer to a different position; and

3. Have self-nominated to a posted vacancy announcement [~~of a different class~~].

(2) An employee with status interested in internal mobility shall:

(a) Submit a completed Application [~~for Employment or Application Update, whichever is appropriate,~~] to the Personnel Cabinet in an appropriate format as designated by the secretary; and

(b) Self-nominate for [Request] placement on the register.

(3) An appointing authority may request a register consisting of exclusively internal mobility candidates for a time period specified by the appointing authority of at least ten (10) calendar days.

~~Section 5. [6.] Reemployment Registers. The secretary shall prepare a reemployment register, which:~~

(1) Shall contain the names of former employees, in rank order of seniority, who are exercising their reemployment rights; and

(2) May be combined with the list of current employees in the Internal Mobility Program for the classification.

~~Section 6. [7.] Full-time or Part-time Registers. [(1)] The secretary shall certify [maintain] a separate register for full-time and part-time positions.~~

~~[(2) An eligible shall notify the cabinet if he wants to be on the register for full time, part time or both.]~~

~~Section 7. [8.] Maximum Number of Registers [Classifications].~~

A person meeting minimum qualifications for job classifications shall be eligible to self-nominate to any posted vacancy. [Except for an individual exercising reemployment rights, a person shall not be eligible to have his name placed on the register for more than fifteen (15) individual job classifications at the same time.]

~~Section 8. [9.] Incorporation by Reference. (1) [The following material is incorporated by reference:~~

~~(a) Request for Certification Forms P-7 and P-7(a), September 1999;~~

~~(b) "Application for Employment", is incorporated by reference, [Form P-2, September 1999; and~~

~~(c) "Application Update", September 1999.]~~

~~(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007 at 10 a.m. at 200 Fair Oaks Lane, Room 508, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007 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 July 2, 2007. 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: Thomas B. Stephens, Office of Legal Services, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, phone 502 564-7430, fax 502 564-7603.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Thomas Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for the state registers.

(b) The necessity of this administrative regulation: The current recruitment process effectively requires applicants to drive to Frankfort to apply for a position. Although, applications are received via e-mail and by U. S. mail, practical administration lends itself to give priority service given to those applicants who apply in person. This process places an unfair burden on citizens who live far from Frankfort. For example, a person may drive four hours from Paducah to Frankfort to apply for a job within a few miles of their home. The current regulation and administrative processes do not allow applicants to actively and selectively seek employment in a job of interest. Certified registers contain applicants who may have been seeking employment up to one to two years ago and are no longer interested in any open position. Commonwealth agencies are unable to effectively work registers to complete the process needed to fill critical positions in a timely manner. The Personnel Cabinet recognizes the ineffectiveness of the current process created by the regulation as it currently exists. The cabinet sought and received authorization for KHRIS as a Capital Project by the 2004 General Assembly. In order to fully implement the vision of KHRIS, it is essential to change the recruitment environment to meet the needs of state government. This amendment provides the administrative authority to change the environment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will



assist in the effective administration of the statutes: This regulation defines how certified registers are created.

(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:

1. Determine the medium and format of state applications that is acceptable for the recruitment program;

2. Provide for review of applicants' qualifications to identify additional applicants for registers where there is insufficient interest;

3. Provide for self-nomination of applications to vacant positions; and

4. Eliminate the restriction on the number of registers an applicant can be placed on, currently fifteen (15) registers.

(b) The necessity of the amendment to this administrative regulation: KHRIS was authorized as a capital project by the 2004 General Assembly. In order to fully implement the vision of KHRIS, it is essential to change the recruitment environment to meet the needs of state government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.040, and 18A.110.(1) (f) and (7).

(d) How the amendment will assist in the effective administration of the statutes: The amendment eliminates any misunderstanding by applicants that qualifying for a classification implies that a position is currently open. The amendment will allow the cabinet to receive applications via an on-line system and provide interested, qualified applicants to Commonwealth agencies via a certified register. The amendment eliminates the need for applicants to be limited to fifteen (15) registers at any given time.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth Executive Branch agencies with KRS Chapter 18A employees are affected by this 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: Applicants will access the Personnel Cabinet's web site to apply for state employment. The Personnel Cabinet will provide a web site in order to receive applications for employment. The Commonwealth's Executive Branch agencies will have no additional actions required as a result of this regulation amendment.

(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 each of the entities identified in question (3). It is anticipated that this regulation amendment will result in a cost savings to applicants because they will no longer need to travel to Frankfort to apply for a position, the Personnel Cabinet will no longer process applications for which jobs are not vacant; and the agencies will no longer consider applicants who are uninterested in the vacancy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet has determined this will create a more positive state employment process by eliminating the need for applicants to drive to Frankfort to apply for state employment. We currently see 60,000 applicants per year for approximately 4000 appointments. The majority of applicants are applying for an open position. The cabinet has spent numerous hours engaging state agencies and employee representatives and has received overwhelmingly positive response to this amendment.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs. It is anticipated that this amendment will reduce costs to the cabinet and to the agency in that they will not spend time reviewing applications for

applicants uninterested in their position.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs, however, if any costs are associated with this amendment, the costs will be born by the Personnel Cabinet.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2), 18A.040 and 18A.110 (1) (f) and (7).

4. 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 cost to administer the current recruitment program is approximately \$2.7M per fiscal year. It is not anticipated that this cost will increase during the first year.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program should not exceed normal growth patterns for state government. It is anticipated that there may be a cost savings in the agencies as the new system allows for a more efficient recruitment process.

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:

#### PERSONNEL CABINET (Amendment)

**101 KAR 2:066. Certification and selection of eligibles for appointment.**

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.165

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation

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establishes the requirements for certification and selection of eligibles for appointment.

Section 1. Request for Certification of Eligibles. To fill a vacant position in the classified service that is not filled by lateral transfer, reinstatement, reversion or demotion, the appointing authority shall submit a request for a register to the secretary in an appropriate format as designated by the secretary [upon a completed Request for Certification Forms P-7 and P-7(a)]. The request shall:

- (1) Be for one (1) or more positions in the same:
  - (a) Class; or
  - (b) County;
- (2) Indicate:
  - (a) The number and identity of the positions to be filled;
  - (b) The title of the job classification for each position; and
  - (c) Other pertinent information which the appointing authority and the secretary deem necessary; and
- (3) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of Eligibles. (1) Upon receipt of a request for a register [requisition], the secretary shall certify and submit in an appropriate format [writing] to the appointing authority the names of eligibles [available persons eligible] for the position who have self-nominated.

(a) If one (1) position is involved, the secretary shall certify [and submit from the register for that job classification] the names of:

1. The applicants who:
  - (a) Self-nominated for the vacant position; and
  - (b) If a tested position, the names of those eligibles whose scores are included in the highest five (5) scores earned through the selection method;
2. All internal mobility candidates who are eligible and have self-nominated for the vacant position. [for that classification-]
- ~~3. [(b)]~~ If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.
- ~~4. [(2)]~~ Each appointment shall be made from:
  - (a) The internal mobility candidate listing of [or the] eligibles who have self-nominated to the vacancy announcement; or
  - (b) The eligibles with the five (5) highest scores who self nominated to vacant positions, if applicable [Scores shall be considered in whole numbers].
- ~~2. [(3)]~~ The life of a certificate during which action may be taken shall be ninety (90) [sixty (60)] days from the date of issue unless otherwise specified on the certificate. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

Section 3. Preferred Skills Questions. (1) The secretary shall approve a list of preferred skills questions for various classifications. The appointing authority may identify those preferred skills questions from the approved list of questions and request that an applicant answer those preferred skills questions at the time of the self-nomination.

(2) After an appointing authority has received a register, the appointing authority may consider the answers to the preferred skills questions to assist in applicant selection.

(3) After an appointing authority has received a register, the appointing authority may consider the answers to the preferred skills questions to assist in applicant selection. [Availability--An eligible may, during the life of a register, have himself listed as available or not available for appointment to a position of that job classification in a county or counties in the state by filing notice to that effect with the secretary.]

Section 4. Selective Certification. (1)(a) The appointing authority shall specify, in writing, requirements of particular experience, education, or skill if those requirements are necessary for a position.

(b) After investigation of the duties and responsibilities of the position, if the secretary finds that the particular experience, education, or skill is essential for successful performance, the secretary

shall certify, in order of rank on the register, the names of those persons with the five (5) highest scores who possess those qualifications.

(c) If, in certifying the names of the eligibles, the secretary finds there are fewer than five (5) eligibles, the secretary shall complete the certificate by adding, after the names of the eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The secretary shall transmit a copy of all requests for selective certification to the Personnel Board upon approval of the request.]

Section 4. [5.] Selection. The [final selection by the] appointing authority shall report [be reported in writing] to the secretary the recommended candidate for appointment in an appropriate format. [At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the secretary the nonavailability of an eligible passed over for that reason.]

Section 6. Incorporation by Reference. (1) Request for Certification Forms P-7 and P-7(a), September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007 at 10 a.m. at 200 Fair Oaks Lane, Room 508, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007 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 July 2, 2007. 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: Thomas B. Stephens, Office of Legal Services, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, phone 502 564-7430, fax 502 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Thomas Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for certification and selection of eligibles for appointment.

(b) The necessity of this administrative regulation: This regulation is necessary to the implementation of the Career Opportunities System which is part of the Kentucky Human Resource Information System (hereinafter "KHRIS") project currently underway. These updates allow the cabinet to accommodate the transition to an on-line application process whereby interested applicants apply for vacant positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the requirements for certification and selection of eligibles for appointment.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment provides the ability for the cabinet to:

1. Determine the medium and format of state applications that is acceptable for the recruitment program;
2. Provide for the ability for applicants to self-nominate to a vacant position;
3. Provide for the appropriate format and order of eligibles on the certified register; and
4. Provide for the development and use of preferred skills questions which become part of the on-line employment application.

(b) The necessity of the amendment to this administrative regulation: The current recruitment process effectively requires applicants to drive to Frankfort to apply for a position. Although, applications are received via e-mail and by U. S. mail, practical administration lends itself to give priority service given to those applicants who apply in person. This process places an unfair burden on citizens who live far from Frankfort. For example, a person may drive four hours from Paducah to Frankfort to apply for a job within a few miles of their home.

The current regulation and administrative processes do not allow applicants to actively and selectively seek employment in a job of interest. Certified registers contain applicants who may have been seeking employment up to one to two years ago and are no longer interested in any open position. Commonwealth agencies are unable to effectively work registers to complete the process needed to fill critical positions in a timely manner.

The Personnel Cabinet recognizes the ineffectiveness of the current process created by the regulation as it currently exists. The cabinet sought and received authorization for KHRIS as a Capital Project by the 2004 General Assembly. In order to fully implement the vision of KHRIS, it is essential to change the recruitment environment to meet the needs of state government. This amendment provides the administrative authority to change the environment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A110.(1)(b) and (7).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the cabinet to receive applications via an on-line system and provide interested, qualified applicants to Commonwealth agencies via a certified register. The amendment also allows for the introduction of preferred skills questions which will allow the agencies to determine skills and interest during the self nomination process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment, the Personnel Cabinet and all Commonwealth agencies are affected by this 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: Applicants will access the Personnel Cabinet's web site to apply for state employment. The Personnel Cabinet will provide a web site in order to receive applications for employment. The Commonwealth's Executive Branch agencies will have the ability to work with the cabinet to identify skills needed to perform the duties of the vacancy and ask pertinent preferred skill questions of the applicant during the nomination process to a vacancy.

(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 each of the entities identified in question (3). It is anticipated that this regulation amendment will result in a cost savings to applicants because they will no longer need to travel to Frankfort to apply for a position, the Personnel Cabinet will no longer process applications for which jobs are not vacant; and the agencies will no longer consider applicants who are uninterested in the vacancy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet has determined this will create a more positive state employment process by eliminating the

need for applicants to drive to Frankfort to apply for state employment. We currently see 60,000 applicants per year for approximately 4000 appointments. The majority of applicants are applying for an open position. The cabinet has spent numerous hours engaging state agencies and employee representatives and has received overwhelmingly positive response to this amendment.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs. It is anticipated that this amendment will reduce costs to the cabinet and to the agency in that they will not spend time reviewing applications for applicants uninterested in their position.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs, however, if any costs are associated with this amendment, the costs will be born by the Personnel Cabinet.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2), 18A.110 (1)(b) and (7).

4. 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 cost to administer the current recruitment program is approximately \$2.7M per fiscal year. It is not anticipated that this cost will increase during the first year.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program should not exceed normal growth patterns for state government. It is anticipated that there may be a cost savings in the agencies as the new system allows for a more efficient recruitment process.

#### GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Amendment)

201 KAR 2:250. Pharmacist Recovery Network [Impaired Pharmacists] Committee.

RELATES TO: KRS 315.121(1)(d), 315.126

STATUTORY AUTHORITY: KRS 315.126(3), 315.191(1)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.126(1) requires the Board of Pharmacy to establish a pharmacy recovery network committee (PRNC) [an impaired pharmacist committee]. This administrative regulation establishes minimum requirements for the establishment and operation of the PRNC [Impaired Pharmacists Committee]. This administrative regulation specifies the manner by which the board's PRNC [impaired pharmacist committee] consultant works with the board in intervention, evaluating and treating a pharmacist or intern, and providing for continuing care and monitoring by the consultant through a treatment provider.

Section 1. The board's PRNC [Impaired Pharmacist Committee] consultant shall be a pharmacist licensee of the board. The consultant shall assist the Case Review Committee (CRC) and the PRNC [Impaired Pharmacists Committee] in carrying out their respective responsibilities. This shall include working with the board's inspectors and investigators to determine whether a pharmacist or intern [practitioner] is in fact impaired.

Section 2. If a pharmacist or intern self reports impairment as a result of the misuse or abuse of alcohol or drugs, or both; or if the board receives a [written,] legally sufficient complaint alleging that a pharmacist or intern [licensee] is impaired as a result of the misuse or abuse of alcohol or drugs, or both, [or due to a mental or physical condition which could affect the licensee's ability to practice with reasonable care, skill and competence,] and no complaint against the pharmacist or intern [licensee] other than impairment exists, the reporting of any impairment [the] information to the board shall be forwarded to the consultant and shall not constitute grounds for discipline, if the PRNC [Impaired Pharmacists Committee] finds the pharmacist or intern [licensee] has:

- (1) Acknowledged the impairment problem;
- (2) Voluntarily enrolled in an appropriate, approved treatment program;
- (3) Voluntarily withdrawn from practice or limited the scope of practice as required by the consultant, in each case, until the PRNC [Impaired Pharmacists Committee] is satisfied the licensee has successfully completed an approved treatment program; and
- (4) Executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall not make copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.

Section 3. [If the licensee voluntarily agrees to withdraw from practice until the consultant determines that the licensee has satisfactorily completed an approved treatment program or evaluation, the Case Review Committee shall not become involved in the licensee's case.

Section 4. Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint.

Section 5. If the board receives a legally sufficient complaint alleging that a licensee is impaired and no complaint against the licensee other than impairment exists, the board shall forward all information in its possession regarding the impaired licensee to the consultant.

Section 6. (1) The Impaired Pharmacists Committee and the Case Review Committee shall work directly with the consultant and all information concerning a practitioner obtained from the consultant by the committees shall remain confidential.

(2) A finding of probable cause shall not be made as long as the Impaired Pharmacists Committee is satisfied, based upon information it receives from the consultant, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.

Section 7. In any disciplinary action for a violation other than impairment in which a licensee establishes the violation for which the licensee is being prosecuted was due to or connected with impairment and he further establishes that the licensee is satisfactorily progressing through or has successfully completed an approved treatment program, the information may be considered by the board as a mitigating factor in determining the appropriate penalty.]

Section 8:] (1) A treatment provider shall disclose to the consultant or board if applicable all information in its possession regarding the issue of a pharmacist's or intern's [licensee's] impairment and participation in the treatment program. [All information obtained by the consultant shall be confidential and may only be shared with the board or the Impaired Pharmacists Committee.

(2) Failure of the treatment provider to provide information to the consultant shall be a basis for the withdrawal of the use of the program or provider.

(2) [(3)] If in the opinion of the consultant or PRNC, an impaired pharmacist or intern [licensee] has not progressed satisfactorily in a treatment or recovery program, all information regarding the issue of a pharmacist's or intern's [licensee's] impairment and participation in a treatment or recovery program in the consultant's possession shall be disclosed to the board. Such disclosure shall constitute a complaint. [If the consultant concludes that the impairment is affecting a licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the board.]

Section 4. All information concerning a pharmacist or intern held by the consultant, PRNC, CRC, or board shall remain confidential.

Section 5. (1) The PRNC shall be comprised of eleven (11) members. The members shall include:

- (a) The President of the Board of Pharmacy;
- (b) The Chair of the PRNC;
- (c) The Executive Director of the Board of Pharmacy; and
- (d) Eight (8) other members, of which seven (7) shall be pharmacists and one (1) shall be a citizen member.

(2) All members shall have the same rights, which include voting privileges. No member of the PRNC shall be on the board, except the President of the Board. Any criminal conviction or disciplinary action by a licensure board against a proposed member shall be reported to the board prior to consideration for appointment. There may be no more than four (4) members in successful recovery on the PRNC. No pharmacist under a Pharmacist Recovery Network Agreement shall serve on the PRNC.

(3) A PRNC member may be appointed by the board a maximum of three (3) four (4) year full or a portion thereof terms. A PRNC member shall not serve more than (2) terms consecutively. After serving two (2) consecutive terms a PRNC member shall rotate off the PRNC for at least two (2) years. A committee member shall serve no more than twelve (12) years on the PRNC. The President of the Board, the PRNC Consultant, and the Executive Director of the Board membership on the PRNC shall not constitute a twelve (12) year term. Membership of the PRNC shall be selected by the board from a list of qualified candidates submitted by an interested individual or entity.

(4) A member of the PRNC that becomes impaired, relapses, has any criminal conviction, or has any disciplinary action by a licensure board shall immediately resign from the PRNC.

(5) The board by majority vote, with the recusal of the President of the Board, may remove a member of the PRNC for any of the following reasons:

- (a) Refusal or inability of a committee member to perform duties as a member of the committee in an efficient, responsible, and professional manner;
- (b) Misuse of the committee by a member to obtain personal, pecuniary, or material gain or advantage for the member or others; and
- (c) Violation of any provision of KRS Chapter 315.

PETER J. ORZALI, President

APPROVED BY AGENCY: May 9, 2007

FILED WITH LRC: May 14, 2007 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Tuesday June 26, 2007 at 10 a.m. at the Board's office, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by 4:30p.m. Tuesday June 19, 2007 five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30p.m. Monday July 2, 2007.

**CONTACT PERSON:** Michael Burleson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administrative Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511; phone 859 246-2820; fax 859 246-2823.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows the pharmacist recovery network to function and the appointment of its members.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.126.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations that establishes the requirements for impaired pharmacist committee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for the impaired pharmacist committee and changing the name.

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

(a) How the amendment will change this existing administrative regulation: This will change the name of the committee and will set the requirements for the appointment of committee members.

(b) The necessity of the amendment to this administrative regulation: To change the name and set the requirements for appointment of committee members.

(c) How the amendment conforms to the content of the authorizing statutes: The statute allows the Board to establish requirements for appointment of committee.

(d) How the amendment will assist in the effective administration of the statutes: This will allow the Board to change the name of the impaired pharmacists committee and set the requirements for appointment of committee members.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates less than eleven (11) individuals annually will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Committee members will be appointed based upon certain criteria and committee members will have set terms.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will have guidelines on

appointing members of the committee.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all committee members.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 would impact the Kentucky Board of Pharmacy

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.121, KRS 315.126 and KRS 315.191 requires or authorizes the action taken by this administrative regulation

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT

#### Kentucky State Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

#### 201 KAR 18:040. Fees.

RELATES TO: KRS 322.060, 322.090, 322.100, 322.110, 322.120, 322.160, 322.170

STATUTORY AUTHORITY: KRS 322.090, 322.100, 322.110, 322.120, 322.290 (4), 322.290 (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.100 gives the board the authority to set license fees. This administrative regulation establishes fees for examination, licensure, reinstatement, verification, reissuance, and renewal.

Section 1. Examination Fees. (1) The fees for taking the Prin-

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principles and Practice of Engineering Examination, the Principles and Practice of Land Surveying Examination, the Fundamentals of Engineering Examination, the Fundamentals of Land Surveying Examination, and the Structural II Examination shall be the actual amounts charged by the National Council of Examiners for Engineering and Surveying.

(2) The board shall reimburse examination fees for successfully completing:

(a) Any examination listed in subsection (1) for active members or veterans of the Armed Forces of the United States. Application for reimbursement shall be made in writing to the board and include proof of passing the examination and of service in the Armed Forces of the United States.

(b) The Fundamentals of Engineering Examination or the Fundamentals of Surveying Examination for students currently enrolled in a Kentucky university or college on the date the examination was taken. Application for reimbursement shall be made in writing to the board and include proof of passing the examination and of enrollment in a Kentucky university or college on the date the examination was taken.

Section 2. Initial Licensure, Reciprocity, Renewal, Reinstatement, Reissuance, and Verification Fees. (1) Verification of licensure is ten (10) dollars.

(2) Renewal of an individual license is \$150.

(a) Licensees whose surnames begin with the letters A through K shall renew in odd-numbered years.

(b) Licensees whose surnames begin with the letters L through Z shall renew in even-numbered years.

(3) (a) The fee for reinstatement of an expired license or business entity permit that has been expired for less than one (1) year shall be calculated as provided by KRS 322.160 (3).

(b) If the license or business entity permit has been expired for more than one (1) year, the former licensee or business entity shall file an application for reinstatement and pay a fee of \$500.

(4) Reissuance of a license after loss or destruction is twenty-five (25) dollars.

(5) The fee for licensure by reciprocity as a professional engineer or professional land surveyor shall be \$300. The fee shall accompany the application for licensure.

(6) (a) Applicants whose surnames begin with the letters A through K who are initially licensed in:

1. An even-numbered year shall not pay an initial license fee;

or

2. An odd-numbered year shall pay an initial license fee of seventy-five (75) dollars.

(b) Applicants whose surnames begin with the letters L through Z who are initially licensed in:

1. An odd-numbered year shall not pay an initial license fee; or

2. An even-numbered year shall pay an initial license fee of seventy-five (75) dollars.

(7) An applicant who fails the two (2) hour state specific examination on the first attempt shall be charged fifty (50) dollars for each subsequent attempt.

Section 3. Fees for Examination and Licensure in Additional Disciplines. (1) After initial licensure, a licensee may apply for examination in one (1) or more disciplines of engineering for which he has not been licensed.

(2) For each discipline of engineering he shall submit an:

(a) Updated application; and

(b) Examination fee as specified in this administrative regulation.

(3) Upon successful completion of an examination, he shall submit ten (10) dollars for each addition of a new discipline.

Section 4. Business Entities. (1) The fee for a permit to practice engineering or land surveying in this state shall be \$100 for either permit.

(2) A business entity which applies for a dual permit shall submit \$150.

(3) These fees shall accompany the application.

(4) The annual renewal fee for an individual permit shall be \$100.

(5) The annual renewal fee for a dual permit shall be \$150.

Section 5. Payment of Fees. (1) (a) Fees payable under Section 2 of this administrative regulation shall be paid by check or money order made payable to "Kentucky Board of Licensure".

(b) Fees payable under Section 1 of this administrative regulation shall be paid directly to the examination service.

(2) All fees are nonrefundable.

Section 6. Forms. (1) The following forms are incorporated by reference:

(a) "Application for Licensure to Practice Professional Engineering (1999)";

(b) "Application for Licensure to Practice Professional Land Surveying (2000)";

(c) "Professional Reference Form (2000)"; and

(d) "Report of Professional Experience (2000)".

(2) These forms may be obtained, inspected, or copied, subject to applicable copyright law, at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, or by downloading from the board's web page at <http://kyboels.state.ky.us>.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: May 15, 2007

FILED WITH LRC: May 15, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2007 at 1:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. 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 July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes fees for examination, licensure, reinstatement, verification, reissuance, and renewal.

(b) The necessity of this administrative regulation: KRS 322.100 requires the board to establish license fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains all fee amounts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets all fees so that the board can charge the appropriate amount for each item.

(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 the board to reimburse examination fees for two specific groups. Members or veterans of the United States Armed Forces would be eligible for reimbursement for any exam they successfully pass. Students currently enrolled in a Kentucky college or university would be eligible for reimburse-



ment for successfully passing the Fundamentals of Engineering or the Fundamentals of Surveying examination.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to reimburse certain examination fees.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 322.290 (10) which allows the board to make expenditures it deems necessary for any reasonable purpose. The board considers the reimbursement of these exam fees to be reasonable.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the conditions and requirements necessary in order to reimburse certain examination fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 400 examination candidates annually and the board itself.

(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 amendment will have a positive impact on the qualifying examination applicants in that they can be reimbursed for their examination fees.

(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 board will have to process the written requests submitted by examination candidates. No other regulated entities are affected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the board will be approximately \$30,000 annually which will be paid with restricted funds generated by the board. No general funds are involved since the board receives no general funds. There will be no costs to any other entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will allow certain examination candidates to be reimbursed for their examination fees. This may result in more students and veterans taking the examinations.

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

(a) Initially: None

(b) On a continuing basis: \$30,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or 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 increase in funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)**

**201 KAR 20:070. Licensure by examination.**

RELATES TO: KRS 194A.540, 214.615, 314.041(1), (2), 314.051(3), 314.470

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for

licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);

2. The licensure application fee as established in 201 KAR 20:240;

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

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

5. A letter of explanation that addresses each conviction;

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) When taking the examination, abide by and cooperate with security procedures adopted by the board;

(e) Apply to take and pass the National Council Licensure Examination; and

(f) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615;

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the applicant fails the examination, whichever comes first.

(3) The name of the applicant shall appear on the "Certified List of Kentucky Program of Nursing Graduates" as established in 201 KAR 20:260, the "Certified List of Out-of-state Program of Nursing Graduates", or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. The "Certified List of Out-of-state Program of Nursing Graduates" shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or licensee's written authorization for their release.

Section 4. Clinical Internship. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of

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201 KAR 20:480, Section 1 (1) and (4) are met.

(3) To be eligible for a clinical internship, the applicant shall hold a current provisional license.

(4) A provisional license shall expire six (6) months from the date of issuance by the board and shall not be reissued unless the provisions of subsection (5) of this section apply.

(5) A person with a temporary physical or mental inability to complete the clinical internship shall:

(a) Complete the "Petition to Hold Provisional License in Abeyance"; and

(b) Submit evidence from a licensed health care practitioner that documents a diagnosis of a temporary physical or mental inability to complete the internship within the original six (6) months.

(6)(a) If the Petition to Hold Provisional License in Abeyance is granted, the current provisional license shall be void and shall be immediately returned to the board.

(b) The person whose petition has been granted shall not engage in nursing practice.

(7)(a)1. A person whose petition has been granted shall submit a written request to the board to reissue the provisional license when the temporary physical or mental inability has been resolved.

2. The request shall include the name, address, telephone number, date of birth, and Social Security number of the person.

3. The request shall also include written verification from a licensed health care practitioner that the temporary physical or mental inability has been resolved.

4. The person shall also submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System, if the previous one (1) is more than six (6) months old.

(b) Upon submission of the required documentation and approval by the board, the board shall reissue the provisional license for six (6) months.

(c) If the required documentation is submitted more than one (1) year from the date of the initial application for licensure, the person shall meet the requirements of Section 1 of this administrative regulation.

(8) Documentation of completion of the clinical internship shall be submitted to the board in writing or electronically. It shall include the following:

(a) Name, address, telephone number, social security number and date of birth of the applicant;

(b) Provisional license number;

(c) Name, address and telephone number of the facility where the clinical internship was completed; and

(d) Name of the supervising nurse.

(9) To qualify as "direct supervision" under KRS 314.041(5) and 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant is engaged in the clinical internship.

(10) The nurse responsible for the applicant shall be currently licensed to practice as a nurse in Kentucky.

(11)(a) Except as provided in subsections (b), (c) and (d) ~~and (e)~~ of this section, the applicant shall successfully complete the clinical internship prior to taking the examination. The board shall not authorize the applicant to take the examination until verification of completion of the clinical internship is filed with the board.

(b) A graduate of a foreign nursing school who complies with 201 KAR 20:480, Section 1(4)(b) shall be authorized to complete the clinical internship after passing the NCLEX.

(c) An applicant who has failed the NCLEX as a result of an application for licensure in a jurisdiction other than Kentucky shall take and pass the examination before completing the clinical internship.

(d) An applicant who is a resident of Kentucky and who intends to complete the clinical internship in a state that has enacted the Nurse Licensure Compact enacted by Kentucky in KRS 314.470 may request that the applicant be permitted to take the NCLEX examination before completing the clinical internship. The applicant's request shall be in writing and shall be accompanied by proof that the applicant has been accepted to complete the clinical internship in the other state.

(12) If the applicant fails the examination, the provisional li-

cense shall be void and shall be immediately returned to the board.

Section 5. Practical Nurse Role Delineation Course. (1) A graduate of a board-approved registered nurse program who is unsuccessful on the National Council Licensure Examination for registered nurses may apply for licensure by examination as a licensed practical nurse pursuant to KRS 314.041(13).

(2)(a) Prior to making application for licensure as a practical nurse, the applicant seeking practical nurse licensure pursuant to KRS 314.041(13) shall complete a board-approved practical nursing role delineation course.

(b) The applicant shall return the registered nurse provisional license, if applicable.

(3) The course shall be taken only at an approved LPN program of nursing. The program of nursing shall seek approval of the course from the board.

(4) The course shall consist of at least eight (8) hours of didactic instruction and sixteen (16) hours of clinical instruction.

(5) At the conclusion of the course, the individual shall be able to make decisions and take actions that are consistent with the scope and standards of practical nursing practice, established policies, procedures, and licensing laws.

(6) The LPN program of nursing shall submit to the board a certified list of individuals who completed the course.

(7) After completion of the practical nurse role delineation course, the applicant shall comply with Section 1 of this administrative regulation.

Section 6. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicate on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of his state of residence.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certified List of Kentucky Program of Nursing Graduates", (2/06), Kentucky Board of Nursing;

(b) "Petition to Hold Provisional License in Abeyance," (8/04), Kentucky Board of Nursing; and

(c) "Certified List of Out of State Program of Nursing Graduates", (2/06), Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SUSAN DAVIS, President

APPROVED BY AGENCY: May 2, 2007

FILED WITH LRC: May 11, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2007, at 9 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 by June 14, 2007, 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 close of business July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov



REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: It sets requirements for licensure by examination.
  - (b) The necessity of this administrative regulation: The board is required by statute to promulgate this administrative regulation.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements for licensure by examination.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements for licensure by examination.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: It will allow applicants who wish to complete the clinical internship in another Compact state, such as Tennessee, to take NCLEX first.
  - (b) The necessity of the amendment to this administrative regulation: The Nurse Licensure Compact was adopted by the General Assembly and necessitates this change. Under the Compact, Kentucky's provisional license will not be recognized by Tennessee until the applicant has first taken and passed NCLEX.
  - (c) How the amendment conforms to the content of the authorizing statutes: The effect of the clinical internship requirement on the Compact law requires this amendment.
  - (d) How the amendment will assist in the effective administration of the statutes: By allowing those applicants who wish to complete their clinical internship in another Compact state to do so.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure examination who wish to complete the clinical internship in another Compact state, number unknown.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to inform the board of their plan to complete the clinical internship in another Compact state.
  - (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.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to become licensed in Kentucky.
  - (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
    - (a) Initially: No additional cost.
    - (b) On a continuing basis: 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 will be necessary.
  - (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.
  - (9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No
2. 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?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
4. 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?
  - (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?
  - (c) How much will it cost to administer this program for the first year?
  - (d) How much will it cost to administer this program for subsequent years?

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

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

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)**

**201 KAR 20:370. Applications for licensure and registration.**

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny, limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced registered nurse practitioner registration, renewal or reinstatement, an applicant shall:

- (1) Submit the appropriate completed application form to the board office, as follows:
    - (a) For RN or LPN licensure by examination, endorsement, or reinstatement, "Application for Licensure";
    - (b) For RN or LPN Renewal, "Annual Licensure Renewal Application: RN or LPN";
    - (c) For registration or reinstatement as an advanced registered nurse practitioner, "Application for Registration as an Advanced Registered Nurse Practitioner";
    - (d) For renewal as an advanced registered nurse practitioner, "ARNP Registration Renewal Application";
    - (e) For renewal as an RN and an ARNP, "Annual Licensure Renewal Application: RN and ARNP";
    - (f) For licensure as an RN and registration as an ARNP, "Application for RN Licensure and ARNP Registration"; [e]
    - (g) For retired licensure status, "Application for Retired Status";
- or
- (h) "Annual ARNP Registration Renewal Application for ARNP with RN Compact License (not Kentucky)".

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for

traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in an administrative regulation;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 4/2007 [2/2006], Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 4/2007 [2/2006], Kentucky Board of Nursing;

(c) "Application for Registration as an Advanced Registered Nurse Practitioner", 4/2007 [2/2006], Kentucky Board of Nursing;

(d) "ARNP Registration Renewal Application", 6/2005, Kentucky Board of Nursing;

(e) "Annual Licensure Renewal Application: RN and ARNP", 4/2007 [2/2006], Kentucky Board of Nursing;

(f) "Application for RN Licensure and ARNP Registration", 4/2007 [2/2006], Kentucky Board of Nursing; [and]

(g) "Application for Retired Status", 8/2004, Kentucky Board of Nursing; and

(h) "Annual ARNP Registration Renewal Application for ARNP with RN Compact License (not Kentucky)", 4/2007, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SUSAN DAVIS, President

APPROVED BY AGENCY, April 19, 2007

FILED WITH LRC: May 4, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2007, at 9 a.m. ET 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 by June 14, 2007, 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 close of business July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email: nathan.goldman@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It generally incorporates application forms and sets application requirements.

(b) The necessity of this administrative regulation: The board is required to take applications for licensure and registration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By incorporating the application forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By incorporating the application forms.

(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: It updates several application forms.

(b) The necessity of the amendment to this administrative regulation: The Nurse Licensure Compact was adopted by the General Assembly and necessitates these application form changes.

(c) How the amendment conforms to the content of the authorizing statutes: The board is required to provide application forms for licensure and registration.

(d) How the amendment will assist in the effective administration of the statutes: By updating the application forms to conform to the Nurse Licensure Compact.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure or registration, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have new application forms to fill out.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have updated application forms.

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

(a) Initially: No additional cost.

(b) On a continuing basis: 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 will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. 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?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. 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?

(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?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 314.142, 314.470

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological and social health.

Section 2. SANE Course Approval Application. On the form "Application for Initial or Continued SANE Course Approval", the applicant for approval of a SANE course shall submit evidence of:

(1) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.470, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning,

development, implementation, and evaluation of the SANE course.

(2) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title and credentials identifying the educational and professional qualifications for each instructor shall be provided.

(3) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements and fees.

(b) Course outcomes. The outcomes shall provide statements of observable competencies, which when taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner.

(c) Unit objectives. Individual unit objectives shall be stated in operational or behavioral terms with supportive content identified.

(d) Content. The content shall be described in detailed outline format with corresponding lesson plans and time frame. The content shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes.

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3 of this paragraph; and

b. The clinical practice experience required by subparagraph 2 of this paragraph.

2. Clinical practice. The clinical portion of the course shall be a minimum of sixty (60) hours and shall include:

a. Supervised detailed genital inspection, speculum examination, visualization techniques and equipment - twenty six (26) hours.

b. Supervised mock sexual assault history taking and examination techniques with evaluation - ten (10) hours.

c. Observing relevant civil or criminal trials, meeting with Commonwealth Attorney, or similar legal experience - sixteen (16) hours.

d. Meeting with rape crisis victim advocate or mental health professional with expertise in the treatment of sexual assault individuals - four (4) hours.

e. Meeting with members of law enforcement - four (4) hours.

3. The didactic portion of the course shall include instruction in the following topics related to forensic evaluation of individuals reporting sexual assault:

a. The role and responsibilities of a sexual assault nurse examiner, health care professional, rape crisis, law enforcement and judicial system personnel;

b. Application of the statewide medical protocol relating to the forensic and medical examination of individuals reporting sexual assault pursuant to KRS 216B.400(2);

c. Principles and techniques of evidence identification, collection, evaluation, preservation and chain of custody;

d. Assessment of injuries, including injuries of forensic significance;

e. Physician consultation and referral;

f. Medicolegal documentation;

g. Victim's bill of rights, KRS 421.500 through 421.550;

h. Crisis intervention;

i. Dynamics of sexual assault;

j. Testifying in court;

k. Overview of the criminal justice system and related legal issues;

l. Available community resources including rape crisis centers;

m. Historical development of forensic nursing conceptual model;

n. Cultural diversity and special populations;

o. Ethics;

p. Genital anatomy, normal variances and development stages;

q. Health care implications and interventions; and

r. Developing policies and procedures.

(e) Teaching methods. The activities of both instructor and learner shall be specified in relation to content outline. These activities shall be congruent with stated course objectives and content, and reflect application of adult learning principles.

(f) Evaluation. There shall be clearly defined methods for evaluating the learner's achievement of course outcomes. There shall also be a process for annual course evaluation by students, providers, faculty, and administration.

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(g) Instructional or reference materials. All required instructional materials and reference materials shall be identified.

(4) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date and site of the course; and

(b) Participant roster, with a minimum of names, Social Security numbers and license numbers.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the "Application for Initial or Continued SANE Course Approval".

(3) Continued approval shall be based on the past approval period performance and compliance with board standards.

Section 5. The board may deny, revoke or suspend the approval status of a SANE course for cause.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.470;

(b) Have completed a board approved SANE educational course or a comparable course. The board or its designee shall evaluate the applicant's course to determine its course comparability. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c) If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(3)(d)3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours to include those topics specified in this paragraph;

(d) Complete the "Sexual Assault Nurse Examiner Application for [Application for SANE] Credential"; and

(e) Pay the fee established in 201 KAR 20:240.

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at

least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the "SANE Renewal Application" and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, the individual may reinstate the credential by:

(a) Submitting the "Application for SANE Credential";

(b) Paying the fee established in 201 KAR 20:240; and

(c) Submitting evidence of earning the continuing education requirement for the number of registered nurse licensure periods since the SANE credential lapsed.

(2) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to adoption by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Initial or Continued SANE Course Approval" (6/97), Kentucky Board of Nursing;

(b) "Sexual Assault Nurse Examiner Application for [Application for SANE] Credential", 4/2007 [2/2006], Kentucky Board of Nursing; ~~and~~

(c) "SANE Renewal Application", 4/2007 [2/2006], Kentucky Board of Nursing; ~~and~~

(d) "Annual SANE Credential Renewal Application for RN Compact License", 4/2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

SUSAN DAVIS, President

APPROVED BY AGENCY: April 19, 2007

FILED WITH LRC: May 4, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2007, at 9 a.m. ET 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 by June 14, 2007, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments shall be accepted until close of business July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and credential requirements for Sexual Assault Nurse Examiners (SANE).

(b) The necessity of this administrative regulation: The board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and credential requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and credential requirements.

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

(a) How the amendment will change this existing administrative regulation: It updates two application forms.

(b) The necessity of the amendment to this administrative regulation: The Nurse Licensure Compact was adopted by the General Assembly and necessitates these application form changes.

(c) How the amendment conforms to the content of the authorizing statutes: The board is required to provide application forms.

(d) How the amendment will assist in the effective administration of the statutes: By updating the application forms to conform to the Nurse Licensure Compact.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for SANE credential, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have new application forms to fill out.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have updated application forms.

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

(a) Initially: No additional cost.

(b) On a continuing basis: 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 will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. 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?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. 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?

(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?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Appraisers Board  
(Amendment)

201 KAR 30:180. Distance education standards.

RELATES TO: 324A.035(3)(d), (f)

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d),

(f) NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of distance education courses for real estate appraisers.

Section 1. Definitions. (1) "Distance education course" means an organized instructional process which is presented through the use of computer technology, satellite transmission or optical fiber transmission.

(2) "Instructor" means the individual responsible for the dissemination of the educational information in a distance education course.

(3) "Provider" means any organization or individual offering [continuing] education courses via computer technology, satellite transmission or optical fiber transmission.

Section 2. Limitations On Distance Education Courses. (1) [Distance education course approval shall be available only to courses for continuing education under 201 KAR 30:050, Section 7.

~~(2) Distance education course approval shall not be available for qualifying education under 201 KAR 30:050, Sections 2 and 3, or 201 KAR 30:190.~~

~~(3) Distance education courses that involve less than two (2) hours of credit shall not be approved.~~

~~(2) [(4)] Distance education shall not be allowed for the Appraiser Qualification Board National Uniform Standards of Professional Appraisal Practice seven (7) hour update or the fifteen (15) hour class or their equivalent content as approved by the Appraisers Standard Board of the Appraisal Foundation.~~

Section 3. Standards for Distance Education Course Approval. (1) To qualify for [continuing] education credit, each distance education course, with information that specifically outlines the content

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of the course, shall be submitted for approval by the board in advance of the presentation of the course in accordance with this administrative regulation.

(2) The education provider applying for approval shall complete and submit the following:

- (a) The "Distance Education Course Application"; and
- (b) The "Distance Education Instructor Application".

(3) Board approval shall be given to a distance education course which the board finds to provide competent instruction in real estate appraisal so as to establish, maintain and increase the student's skill, knowledge, and competency in real estate appraising.

(4) The content of a distance education course shall be reviewed to ensure that the course contributes to the licensee's professional knowledge and competence and for compliance with this administrative regulation.

(5) Course reviewers:

(a) The course shall be reviewed by a distance education course delivery consultant and two (2) appraisal content reviewers appointed by the board.

1. The distance education course delivery consultant appointed shall be an academic educator with demonstrated competency in the distance education field.

2. The appraisal content reviewers shall consist of one (1) educator who is academically qualified in appraisal subjects and one (1) member who holds a certified general real property appraisal certification.

(b) A report of findings and of the reviewers shall be consolidated into a recommendation for approval or disapproval and delivered to the board within forty-five (45) days of receipt of a complete edition of the course.

(6) Each applicant who submits a distance education course for approval shall submit a letter of approval for each [continuing] education course being applied for approval by the board from the International Distance Education Certification Center (IDECC) and the Appraiser Qualifications Board of the Appraisal Foundation.

(7) Every distance education course shall include a final examination that is:

(a) Administered after the completion of the course by a proctor approved by the board in accordance with the provisions of Section 5 of this administrative regulation; and

(b) A comprehensive assessment of the student's overall mastery of the materials presented in the course.

Section 4. Provider Approval. (1) Credit for the classroom hour requirement for [continuing] education courses delivered via distance education may be obtained from the following:

- (a) A college or university;
- (b) A community or junior college;
- (c) A real estate appraisal or real estate related organization;
- (d) A state or federal agency or commission;
- (e) A proprietary school; or
- (f) An education provider approved by the board under 201 KAR 30:150.

(2) Credit may be granted for continuing education distance education courses that are consistent with the purposes of continuing education and that cover real estate appraisal related topics including:

- (a) Ad valorem taxation;
- (b) Arbitration;
- (c) Business courses related to the practice of real estate appraisal;
- (d) Development cost estimating;
- (e) Ethics and standards of professional practice;
- (f) Land use planning, zoning, taxation;
- (g) Management, leasing, brokerage, timesharing;
- (h) Property development;
- (i) Real estate appraisal;
- (j) Real estate financing and investment;
- (k) Real estate law;
- (l) Real estate litigation;
- (m) Real estate related computer applications;
- (n) Real estate securities and syndication; or
- (o) Real property exchange.

(3) Credit may be granted for qualifying education distance education courses that cover Required Core Curriculum topics outlined in 201 KAR 30:190, Section 7.

Section 5. Instructors and Proctors. (1) An instructor of a distance education course shall:

(a) Hold a Certified General Real Property Appraiser Certification or Certified Residential Real Property Appraiser Certification with a minimum of five (5) years of experience and competency in the specific area of appraisal subject being taught;

(b) Not have been found by the board to have violated the requirements of KRS 324A.050 or the administrative regulations promulgated pursuant to KRS Chapter 324A;

(c) Submit copy of the instructor's curriculum vitae and appraisal certification.

(d) If instructors are changed or added, the credentials of the new instructors shall be submitted for approval before they can teach a course.

(2)(a) A proctor is the board approved individual responsible for supervising the distance education course examination.

(b) Proctors shall not be subject to the same qualifications as those for distance instructors outlined in Section 5(1) above.

(c) A proctor shall not be:

1. A licensed real estate salesperson or broker;
2. A licensed or certified real property appraiser;
3. Affiliated with a real estate sales or real property appraisal office or business;
4. Related to the student by blood or marriage; or
5. Associated personal or business with the student either personally or by business relationship.

(d) A proctor may be selected from many difference professions, including:

1. A university, college or community college professor or instructor;
2. A registered public librarian;
3. A public school administrator;
4. A Notary Public;
5. An attorney; or
6. Nominee of the provider approved by the board.

(e) The proctor shall:

1. Verify that the person taking the examination is the person registered for the course by confirmation with a picture ID, with another identification document, including driver's license, student ID card, or by familiarity;

2. Observe the student taking the exam;

3. Assure that the student does all the work himself or herself without aids of any kind, including books, notes, conversation with others or any other external resource;

4. Verify that any calculator is a nonprogrammable hand-held calculator.

5. Provide for the administration of a printed (hard copy) or CD-ROM based final examination.

6. Provide the student with the URL for the course examination which shall be supplied by the provider when a request for the examination is received from the student;

7. Assure that the student adheres to the time limit requirement specified for the examination;

8. Assure that the examination shall be completed in one (1) sitting;

9. See that, if there is any interruption, the board is notified that the examination was interrupted, the reason for the interruption, and the board, or its designee, shall approve the request to resume.

10. Upon completion of the examination, submit a certificate which confirms that he or she verified the identity of the student, that the examination was completed on the date assigned during the time permitted, and that the student has done all the work himself or herself without aids of any kind, including books, notes, conversation with others, or any other external resource while taking the examination, including access to Internet search engines or web pages other than that displaying the examination.

Section 6. Course delivery medium. (1) All course delivery systems shall contain provisions for interactivity including:

(a) Instructor feedback with a response time of no more than two (2) business days to student lesson assignment, quiz submissions and inquiries;

(b) Student inquiry shall be readily available and identified for general questions concerning the course;

(c) Provision for timely clarification of confusing points, errors in the study text or a combination of each;

(d) A student's activity in the course shall be reviewed by the instructor at least every thirty (30) days to assess progress and he shall determine the cause of potential delays in the student's completion of the course.

(2) The provider shall provide the board's course reviewers with:

(a) Two (2) full copies of the courseware with free access to the course text, assignments, quizzes, and final examination; and

(b) The URL and any username or password required for free access, if Internet course delivery is used.

Section 7. Record Keeping and Reports. (1) The provider shall furnish to the board notification identifying the student, along with the name of the course in which the student is enrolled, as each enrollment is received by the provider.

(2) At the conclusion of the course, the student shall submit a Certification of Independent Study for the course.

(3) Upon the completion of the final examination, the proctor shall submit a Proctor's Certification of the student's independent work and timely completion of the examination.

(4) A comprehensive evaluation of the student's overall on-line experience during the course shall be submitted at the conclusion of the course using board-approved forms or provider forms containing essentially the same evaluation criteria.

(5) A Certificate of Completion shall be delivered to the board and the student upon successful completion of the course and a satisfactory score on the final examination containing, as a minimum, the information on the Real Estate Appraisers Board form.

Section 8. Fees. The following nonrefundable fees shall be paid in connection with distance education courses submitted for approval by the board.

(1) \$200 for review of each distance education delivery system submitted for approval; and

(2) \$150 for each individual course submitted for content and time delivery review and approval by the board.

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

(a) "Distance Education Course Approval", (2005);

(b) "Distance Education Student Independent Work Certification", (2005);

(c) "Distance Education Proctor's Examination Certification", (2005); and

(d) "Distance Education Course Evaluation", (2005).

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2624 Research Park Drive, Suite 204 Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

RUSSELL SLOAN, Chair

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2007 at 9 a.m., at 2624 Research Park Drive, Suite 204 Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 20, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2624 Research Park Drive, Suite 204 Lexington, Kentucky 40511, phone (859) 543-8943, fax (859) 543-0028

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the education requirements for distance education for certification for certificate holders acquiring continuing and qualifying education.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the education requirements for certificate holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the educational requirements for certificate holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the requirements for distance education providers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation allows distance education to be available for qualifying education courses.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to expand the courses that are available for education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations regarding the educational requirements for certificate holders.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board in administering this program by identifying the requirements for distance education providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately three hundred persons currently involved in seeking certification by 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: The individuals identified in question (3) will have to choose from more options for obtaining education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals identified in question (3) will have more options for obtaining education.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

(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 fees will be required to implement 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 does not establish fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 324A.020, 324A.035(3)(d), (f).

4. 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:

**KENTUCKY OFFICE OF HOMELAND SECURITY  
Office of the 911 Coordinator  
Commercial Mobile Radio Service Emergency  
Telecommunications Board  
(Amendment)**

**202 KAR 6:020. CMRS carrier cost recovery.**

RELATES TO: KRS 65.7621-65.7643, 9 U.S.C. Sections 1-16, 47 U.S.C. Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(3) requires the CMRS Board to distribute a portion of the revenues deposited into the CMRS fund to CMRS providers (carriers) licensed to do business in the Commonwealth, solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order. This administrative regulation establishes the process by which CMRS carriers may obtain cost recovery for those expenses.

Section 1. A carrier shall file a cost recovery plan with the CMRS Board in order to receive reimbursement for NRCs and RCs.

Section 2. Cost Recovery Plan Submission. (1) Upon receipt of a written request for wireless E9-1-1 service from a PSAP that has been certified by the board in accordance with KRS 65.7631(4)(a), the CMRS carrier shall:

(a) Acknowledge receipt of the request back to the PSAP within thirty (30) days; and

(b) Develop a comprehensive detailed plan for implementation

of E9-1-1 service for:

1. The requesting PSAP; or

2. The appropriate service area if the CMRS carrier's switch serves more than one (1) PSAP.

(2) A CMRS carrier shall provide the technical aspects of the plan to the requesting certified PSAP. The CMRS carrier shall submit the plan and the associated cost structure to the board, including a completed "Kentucky CMRS Carrier Data Sheet". The board shall request from the carrier, if necessary to reach a decision:

(a) Additional information; or

(b) A presentation.

(3) Only carrier costs directly attributable to wireless E9-1-1 call completion shall be considered for recovery, in accordance with Section 8 of this administrative regulation.

Section 3. Cost Recovery Plan Requirements. A plan submitted to the board shall contain the following information:

(1) The carrier's good faith estimate of its total cost recovery reimbursement claim for providing wireless E9-1-1 service in the area served by the requesting PSAP or the appropriate service area for the carrier's switch;

(2) Specific detail for each NRC and RC the carrier expects to recover;

(a) An RC shall be described as subscriber-based or nonsubscriber-based;

(b) An RC shall be based on a calendar month. If a carrier chooses a different period on which to base its RCs, the period used and the logic employed shall be identified;

(3) A description of the technology solution the CMRS carrier has elected to implement and the projected implementation dates;

(4) A map or other detailed description of the coverage area affected by the plan;

(5) A list of the PSAPs affected by the carrier; and

(6) The carrier must identify name(s) and office of the individual(s) who is authorized by the carrier to submit sworn paid invoices to the board for reimbursement. [The method by which the carrier will identify the persons authorized to submit sworn paid invoices to the board for reimbursement.]

Section 4. Cost Recovery Plan Approval. (1) A cost recovery plan submitted to the CMRS Board shall be stamped "Confidential" and proprietary information received shall be filed and maintained so as to preserve its confidentiality in accordance with KRS 65.7639.

(2) A cost recovery plan submitted to the board shall be approved or disapproved within ninety (90) days of its receipt by a simple majority vote of the board.

(3) Within ten (10) business days of its approval or disapproval, notice of the decision shall be sent to the carrier and affected PSAPs, in writing, by certified mail, return receipt requested.

Section 5. Rejection of a Cost Recovery Plan. (1) If a plan is rejected, the board shall include with the decision specific reasons for its rejection

(2) The carrier may submit a revised plan to the board.

(3) The carrier may appeal the board's rejection in accordance with KRS Chapter 13B.

Section 6. Implementation of Additional Service Using an Approved Plan. (1) After initial approval of a CMRS carrier's plan by the board, if the carrier wishes to implement service to an additional area in the state using the existing approved plan, the carrier:

(a) Shall send a letter to the board, by certified mail, return receipt requested, proposing the carrier's intention to use an approved plan for the implementation of additional service;

(b) Shall include with the letter to the board a map of the area to be served by the planned additional implementation.

(c) Need not make an additional presentation to the committee if the board agrees that the carrier's intention fits within the existing approved plan.

(2) The board shall:

(a) Decide within ninety (90) days of its receipt of the carrier's



letter if it agrees that the carrier's intention to use an approved plan is appropriate for the additional service implementation;

(b) Within ten (10) business days of its decision notify the carrier, in writing, by certified mail, return receipt requested; and

(c) Accept the cost recovery outlined in the approved plan as sufficient to submit a claim for reimbursement.

(3) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the board shall:

(a) Within ten (10) business days of its decision notify the carrier, in writing, by certified mail, return receipt requested, identifying its specific concerns; and

(b) Schedule the earliest possible date to meet with the carrier and discuss the identified concerns.

(4) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the carrier may appeal the board's decision in accordance with KRS Chapter 13B.

Section 7. Revision of an Approved Plan. (1) In addition to the process established in Section 6 of this administrative regulation, after a cost recovery plan is approved, a subsequent change may be requested by either the CMRS carrier or the board.

(2) The board may review an existing plan requesting re-substantiation, new documentation and reapproval of an existing cost recovery plan or may revoke approval of a plan as necessary to maintain the integrity of:

(a) The wireless E9-1-1 system as new technologies are deployed; and

(b) The CMRS fund.

(3) A carrier may submit a revised plan or a change in reimbursement rate as business needs and new technologies dictate.

(4) The party requesting revision of a plan shall send written notice of the requested changes to the other party by certified mail, return receipt requested.

(5) An existing approved plan shall remain in effect until a review and decision regarding a requested change is made.

(6) Except as stated in subsection (7) of this section, if the board revokes approval of a plan, reimbursements from the CMRS fund shall cease immediately, except for RCs and NRCs for which the carrier is obligated by a previously signed contract.

(7) Failure of a carrier to respond in writing to a board request within the time frame indicated in the request, may be considered cause for the board to revoke approval of a previously approved plan and to cease reimbursement payments to the carrier.

Section 8. Appropriate Costs for Recovery. (1) For the purpose of differentiating between CMRS carrier costs and PSAP costs, the point of demarcation shall be the selective router of the contracted wireline E9-1-1 service provider, or similarly placed functional equipment within the E9-1-1 call completion hierarchy. The board shall determine, based upon industry standards, what equipment is to be considered "similarly placed functional equipment".

(2) Recoverable RCs and NRCs shall include:

(a) Trunking;

(b) Connection fees between carrier switches or other interface equipment to a selective router;

(c) Facilities: T-1's, selective router ports;

(d) Routing charges;

(e) Operations;

(f) Engineering;

(g) Switch upgrades;

(h) Network design;

(i) Test plan development;

(j) P-ANI administration;

(k) Database management;

(l) Reporting requirements;

(m) Software required for the operation of wireless E-911;

(n) Call counting;

(o) Amortization and carrying costs; ~~and~~

(p) Costs for complying with CMRS audit; and

(q) Other costs. The CMRS carrier shall provide full rationale for other costs submitted.

(3) Submission of costs for activities that occurred more than

twenty-four (24) months prior to submission of an invoice by the carrier to the CMRS board shall not be reimbursed.

Section 9. Use of Reimbursed Funds. A CMRS carrier shall use money received from the CMRS fund only for those expenditures and purposes authorized in KRS 65.7631(3), listed in invoices accepted by the board and as previously authorized in an approved cost recovery plan.

Section 10. Claims for Reimbursement. (1) After a cost recovery plan is approved, a CMRS carrier may file a claim for reimbursement of NRCs and RCs defined in the plan by submitting an invoice or other documentation, as defined in the plan.

(2) An invoice submitted by a CMRS carrier which is consistent with the then-current approved plan shall be paid by the board.

(3) A carrier may appeal a rejected invoice in accordance with KRS Chapter 13B.

(4) The board shall suspend payment of a claim, including a claim previously approved but unpaid by the board, from a carrier who fails to comply with the requirements for remittance as specified by KRS 65.7635, until the carrier complies.

Section 11. Amount of Reimbursement. (1) The amount of payments by the board to a carrier shall be determined by one (1) of the following methods, as set out in the approved cost recovery plan:

(a) By submission of NRCs necessary for the realization of the carrier's approved plan and actually incurred by the carrier;

(b) By submission of the predefined calendar period's nonsubscriber-based RCs;

(c) By submission of the predefined calendar period's subscriber-based RCs; or

(d) By a combination of methods in paragraphs (a), (b), and (c) of this subsection, as previously approved by the board.

(2) To document costs requested to be reimbursed, a carrier shall submit:

(a) A sworn paid invoice for actual costs or purchases from other vendors or suppliers; and approved documentation for internal costs (e.g., time slips for actual work performed by the carrier's employees) sufficient to establish the internal costs as reasonable and necessary; or

(b) other appropriate documentation approved by the board as part of the cost recovery plan.

(3) The subscriber count reported monthly by a carrier with the CMRS fund remittance and reporting process shall be used to determine the total for subscriber-based RCs. The subscriber count shall be subject to audit by the board, in accordance with KRS 65.7629(13).

Section 12. Payment Frequency. At least once per calendar quarter, the CMRS Board shall approve and pay claims submitted by carriers for reimbursement that are consistent with approved cost recovery plans.

Section 13. Prorated Payments. If the board determines that the total amount of invoices submitted by CMRS carriers and approved by the board exceeds the amount of revenue in the fund in a month or other payment period, the board shall pay a prorated share of the available funds to carriers who have submitted board-approved invoices for the relevant period. The priority of payment shall be as follows:

(1) The balance of approved unpaid invoices, including additional carrying charges at a rate established in the approved plan, shall be paid first; and

(2) Current invoices approved by the board shall then be paid.

Section 14. Amortization of Costs. (1) Nonrecurring costs may be amortized over a period not longer than twenty-four (24) months, until the amounts claimed for NRCs are fully recouped by the CMRS carrier.

(2) The board may reject a cost recovery plan or revised cost recovery plan if the amortization period of NRCs selected by the carrier is not long enough to ensure adequate monthly surcharge revenues with which to meet the carrier's monthly reimbursement

demands.

(3) The interest rate for carrying unreimbursed NRCs shall be established and fully documented in the carrier's cost recovery plan.

(4) The actual cost of borrowing to fund NRCs shall be a legitimate recoverable RC.

(5) Only NRCs shall be amortized.

Section 15. Incorporation by Reference. (1) "Kentucky CMRS Carrier Data Sheet" (04/04/2000) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the CMRS Board, 200 Mero Street [~~21 Millereek Park~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KENNETH O. MITCHELL, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2007, at 1 pm, in the Public Hearing Room of the first floor Conference Center at the Kentucky Transportation Cabinet Building, 200 Mero Street in Frankfort. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. 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: Kenneth O. Mitchell, Executive Director, Office of the 911 Coordinator, Administrator, CMRS Board, 200 Mero Street, Frankfort, Kentucky 40601, phone 502 564-3911, fax 502 696-5293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kenneth O. Mitchell, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation covers the process and guidelines for reimbursing wireless providers (carriers) that do business in the Commonwealth of Kentucky for actual expenses incurred in complying with wireless Enhanced 911 service requirements.

(b) The necessity of this administrative regulation: KRS 65.7631(4) allows the CMRS Board to distribute a portion of the CMRS Fund to wireless carriers for the purpose of reimbursing CMRS providers in complying with wireless E911 service requirements

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides specific details on the carrier cost recovery plan, submission requirements, the approval and rejection process, revisions, appropriate costs for cost recovery, and the reimbursement and payment procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation makes clear what carriers must do for cost recovery from CMRS 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: The amendment to the regulation requests the name(s) and office of the individual(s) who is/are authorized by each carrier to submit invoices for reimbursement. It allows costs for complying with a CMRS audit to be an allowable expense. It also limits the submission of costs for activities that occurred to no more than 24 months.

(b) The necessity of the amendment to this administrative regulation: The amendment regulates the amount of time carriers with approved cost recovery plans have to submit requests for reimbursement.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates carrier cost recovery from the CMRS Fund and does not have any other impact beyond what has been described in relation to authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater efficiency in meeting the goals and objectives of CMRS statutes and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 12 wireless carriers have participated in carrier cost recovery.

(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: Carriers will have to specify names and offices of individuals authorized to submit invoices. They will also be given up to 24 months to submit invoices.

(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 costs associated with the amendment to this regulation. (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will provide greater efficiencies in administering carrier cost recovery.

(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: The CMRS Fund is the source of revenues for carrier cost recovery as outlined in KRS 65.7631(4).

(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 additional fees or funding increases will be necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish fees and none were increased.

(9) TIERING: Is tiering applied? This regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. 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?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. 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?

(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?

(c) How much will it cost to administer this program for the first year?

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

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

regulation.

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

**Kentucky Office of Homeland Security  
Office of the 911 Coordinator  
Commercial Mobile Radio Service Emergency  
Telecommunications Board  
(Amendment)**

**202 KAR 6:030. Confidential and proprietary information.**

RELATES TO: KRS 65.7621-65.7643, 9 U.S.C. Sections 1-16, 47 U.S.C. Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1), 65.7639

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. In order to comply with KRS 65.7629, 65.7639, and administrative regulations promulgated by the CMRS Board, it is necessary that the board and PSAPs certified by the board obtain information deemed proprietary by the CMRS carriers or LECs. KRS 65.7639 protects such information and governs the form and manner of its release to others. This administrative regulation establishes the procedures by which the board will insure the security of information deemed confidential or proprietary.

Section 1. Identification of Confidential or Proprietary Information. (1) Information identifying subscribers shall be held confidential, as proprietary information belonging to the disclosing CMRS provider, by the board and each of its employees. Identifying information shall include a subscriber's:

- (a) Name;
- (b) Telephone number;
- (c) Billing address; and
- (d) Other data specified in KRS 65.7639.

(2) A CMRS carrier, PSAP, or LEC shall explicitly and clearly mark as confidential, prior to submission, information supplied and regarded by the carrier, PSAP, or LEC as proprietary.

(3) The board shall not regard as confidential or proprietary the identification of a carrier or LEC or a subsidiary of either.

Section 2. Allowable Uses of Confidential and Proprietary Information. The use of confidential or proprietary information shall be strictly limited to:

- (1) Disburse funds as provided in KRS 65.7631(1), (2), ~~and~~ (3), ~~and~~ (4);
- (2) Discharge the duties of the board and its agents as provided in KRS 65.7629(1), (3), (8), (12), and (13)(a);
- (3) Process revenues remitted to the board by CMRS carriers; and
- (4) Manage calls by PSAPs in accordance with KRS 65.7639.

Section 3. Management of Confidential and Proprietary Information in the Possession of the Board. (1) The board shall instruct, in writing, all board personnel, agents of the board, and PSAPs as to the proper management and uses of confidential and proprietary information.

(2) A nondisclosure agreement shall be signed by each board member, employee, and agent of the board who may handle or possess information deemed confidential or proprietary.

(3) Material deemed confidential or proprietary shall be specifically and clearly identified by the board.

(4) Only persons specifically authorized by the board shall open board correspondence. Correspondence received by postal mail, electronic mail, or facsimile and opened by an unauthorized person shall:

- (a) Not be copied;
- (b) Be immediately returned to its container; and
- (c) Immediately forwarded to the board.

(5) Proprietary and confidential information in the possession of the board, a member, agent, or any other person or entity shall

be stored in a secure room, vault, or container. The room, vault, or container shall be kept locked when unattended or outside of normal business hours. Electronic files containing confidential or proprietary information shall be secured utilizing established mainframe protocols, stand alone servers, secured sockets, or password protected desktop applications, as appropriate.

(6) Access to confidential and proprietary information shall be limited to persons specifically authorized by KRS 65.7639.

(7) Each copy of confidential or proprietary information may be distributed as necessary for the efficient discharge of board duties and responsibilities.

(a) Copies shall be explicitly and clearly marked as confidential.

(b) A person possessing copies of documents containing confidential or proprietary information shall be responsible for document security.

(c) A copy no longer required shall be;

- 1. Returned to the board immediately; or
- 2. Destroyed immediately in such a manner as to prevent its reconstruction.

(8) An original record or file no longer needed for processing shall be:

(a) Sealed securely, retaining the notice of confidentiality, and transferred:

- 1. To a facility accessible only to the board administrator; or
- 2. With board approval, to the state archival and record storage center;

(b) With board approval, destroyed; or

(c) Returned to the proprietor.

Section 4. Breaches of Security. (1) The board shall take immediate action to determine the cause, impact, and persons involved in a security violation of the confidential information entrusted to the board.

(2) Unauthorized access to confidential or proprietary information shall be promptly reported to the board in writing.

(3) A report of a security breach shall include a description of the incident, specific identification of the information disclosed, identification of each person who accessed the records, and the purposes for which access was obtained.

(4) The board shall notify an affected party immediately, providing a copy of the written report detailing the incident.

(5) Willful or negligent disregard of the provisions of this administrative regulation by:

(a) A board member, agent, or employee shall be deemed cause for dismissal or request for resignation, as appropriate to the violator's position.

(b) A PSAP or its employee shall be deemed cause for the board to decertify the involved PSAP.

(6) A board member, agent, or employee who has been dismissed or asked to resign for willful or negligent disregard of the provisions of this administrative regulation may appeal the dismissal in accordance with KRS Chapter 13B.

(7) A PSAP that has been decertified for willful or negligent disregard of the provisions of this administrative regulation may appeal the decertification in accordance with KRS Chapter 13B.

KENNETH O. MITCHELL, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on June 21, 2007, at 1 p.m., in the Public Hearing Room of the first floor Conference Center at the Kentucky Transportation Cabinet Building, 200 Mero Street in Frankfort. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. 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: Kenneth O. Mitchell, Executive Director, Office of the 911 Coordinator, Administrator, CMRS Board, 200 Mero Street, Frankfort, Kentucky 40601, phone 502 564-3911, fax 502 696-5293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kenneth O. Mitchell, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation relates to confidential and propriety information and the protection of such information.

(b) The necessity of this administrative regulation: KRS 65.7639 protects information provided by wireless providers deemed to be confidential and proprietary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides specific details on procedures to comply with KRS 65.7639.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific details on procedures by which the CMRS Board will insure the security of information deemed confidential and proprietary.

(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 regulation is making a correction due to the passage of HB 656 during the 2006 general session.

(b) The necessity of the amendment to this administrative regulation: The amendment reflects changes to KRS 65.763 that became effective with the passage of HB 656 during the 2006 general session. The referenced statute covers the way in which CMRS Funds are apportioned.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is a clerical correction to conform to KRS 65.7631.

(d) How the amendment will assist in the effective administration of the statutes: No change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to wireless carriers/providers that provide information required by the CMRS Board to implement the provisions of KRS 65.7621 through KRS 65.7643.

(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 change.

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

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

(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: 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: No additional fees or funding increases will be necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish fees and none were increased.

(9) TIERING: Is tiering applied? This regulation applies equally

to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. 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?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. 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?

(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?

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Kentucky Office of Homeland Security  
Office of the 911 Coordinator  
Commercial Mobile Radio Service Emergency  
Telecommunications Board  
(Amendment)

202 KAR 6:060. PSAP pro rata fund disbursement.

RELATES TO: KRS 65.7621-65.7643, 9 U.S.C. Sections 1-16, 47 U.S.C. Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the CMRS Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements. This administrative regulation establishes the pro rata fund disbursement process.

~~Section 1. [Initial Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board for pro rata distribution prior to April 1, 2000 shall be frozen in order to provide sufficient opportunity for PSAPs to certify for disbursement of CMRS funds.~~

~~(2) On or before June 30, 2000, the CMRS Board shall establish a date before which a PSAP wishing to receive a pro rata portion of the funds shall have been certified by the board. Not less than ninety (90) days prior to the established date, notice of the date shall be:~~

~~(a) Posted on the CMRS Board's web site; and~~

~~(b) Distributed in writing to:~~

~~1. All PSAPs known to the board;~~

~~2. County judge executives;~~

~~3. Mayors of class six (6) cities or above; and~~

~~4. Mayors of urban county governments.~~

~~(3) Each PSAP certified by the board by the established date shall receive, within forty-five (45) days of the established date, a pro rata disbursement from the frozen funds in accordance with the "PSAP pro rata formula" in KRS 65.7631(2)(a).]~~

Section 2—Ongoing] Revenues Collected by the CMRS Board.  
(1) Monthly revenues remitted to the CMRS Board after March 31, 2000 shall be disbursed to PSAPs in quarterly payments.

(2) ~~[Each PSAP certified by December 31, 2000 shall be eligible for the first and second quarterly payment of funds which shall be those funds collected during the second and third calendar quarter of the year 2000.~~

~~(3) Following the first and second quarterly payment described in subsection (2) of this section,] Any PSAP which is certified by the end of a calendar quarter shall be eligible to receive a pro rata share of funds collected during that quarter. Payments will be made within forty-five (45) days of the end of each calendar quarter.~~

KENNETH O. MITCHELL, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on June 21, 2007, at 1 pm, in the Public Hearing Room of the first floor Conference Center at the Kentucky Transportation Cabinet Building, 200 Mero Street in Frankfort. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. 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:** Kenneth O. Mitchell, Executive Director, Office of the 911 Coordinator, Administrator, CMRS Board, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-3911, fax (502) 696-5293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kenneth O. Mitchell, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation relates to the disbursement of payments from the pro rata fund to CMRS certified Public Safety Answering Points (PSAPs).

(b) The necessity of this administrative regulation: KRS 65.7633(2)(c) establishes procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides specific details on procedures to comply with KRS 65.7631(3)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides procedures on the pro rata disbursement process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the regulation is removing language that is out of date.

(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation is removing language that is out of date.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is a clerical correction to remove dated language.

(d) How the amendment will assist in the effective administration of the statutes: No change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation currently applies to approximately 89 Phase II certified PSAPs that receive quarterly pro rata payments from the CMRS Fund.

(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 change.

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

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

(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: 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: No additional fees or funding increases will be necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish fees and none were increased.

(9) TIERING: Is tiering applied? This regulation applies equally to all regulated entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 regulation currently applies to approximately 89 Phase II certified PSAPs that receive quarterly pro rata payments from the CMRS Fund.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendment relates to KRS 65.7621 through 65.7643. KRS 65.7631 authorizes the actions taken by this regulation.

4. 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? No change.

(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 CMRS Fund was created for the purpose of funding PSAPs operated by local governments and Kentucky State Police in their initial and continuing efforts to provide wireless enhanced Phase II 911 service and in complying with FCC mandates. Since its inception the CMRS Fund has provided over \$54 million dollars to Kentucky's CMRS certified 911 Centers/PSAPs. This regulation specifically covers the pro rata payments which make up one half of the funds disbursed to these PSAPs.

(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:

**Kentucky Office of Homeland Security  
Office of the 911 Coordinator  
Commercial Mobile Radio Service Emergency  
Telecommunications Board  
(Amendment)**

**202 KAR 6:070. PSAP Workload Fund disbursement.**

RELATES TO: KRS 65.7621, 65.7627, 65.7629(5)-(8), 65.7631(3)(2), 65.7643, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d) STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the CMRS Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursements from the CMRS Fund and requests for disbursements, KRS 65.7631(2), and (3), and (4). This administrative regulation establishes the wireless workload fund disbursement process.

~~Section 1. [Initial Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board prior to July 1, 2001 for distribution according to the "wireless workload formula", KRS 65.7631(2)(b), shall be disbursed in one (1) payment.~~

~~(2) A PSAP certified by the CMRS Board on October 1, 2001 shall be eligible to receive a disbursement under this section.~~

~~(3) Not later than July 1, 2001, the CMRS Board shall notify each PSAP of the October 1, 2001 deadline by:~~

~~(a) Posting it on the CMRS Board's web site, <http://cmrsboard.state.ky.us>; and~~

~~(b) Distributing it in writing to:~~

~~1. The county judge-executive of each jurisdiction without a certified PSAP;~~

~~2. The mayor of each class six (6) city, or above, in a jurisdiction without a certified PSAP;~~

~~3. The mayor of an urban county government in a jurisdiction without a certified PSAP;~~

~~4. The executive director of each area development district; and~~

~~5. Every PSAP currently certified.~~

~~(4) Each PSAP certified by the board shall receive a disbursement from the workload funds in accordance with KRS 65.7631(2)(a), within 120 days after June 30, 2001.~~

~~Section 2. Ongoing] Revenues Collected by the CMRS Board.~~

~~(1) Wireless workload revenues remitted to the CMRS Board during a calendar quarter [after June 30, 2001] shall be disbursed in one (1) payment to PSAPs within 120 days of the end of that same calendar quarter.~~

~~(2) Each PSAP certified by the end of a calendar quarter shall be eligible for a disbursement of funds received during that same calendar quarter.~~

~~Section 2.3.] Determination of the Zip Codes or Portions thereof in a PSAP's Jurisdiction. (1) [Not later than June 30, 2001,] The board shall submit to each PSAP certified or with application pending, a list of zip codes within the PSAP's jurisdiction. A zip code with at least three (3) percent of its total area in a jurisdiction shall be included in the list. Percentage allocation shall be determined by the Commonwealth [Governor's] Office for Technology, Division of Geographic Information [Office of Geographic Information Systems], and communicated to the board.~~

~~(2) Within forty-five (45) days of receipt of the zip code list from the CMRS Board, each PSAP shall acknowledge, in writing to the CMRS Board, that:~~

~~(a) The list of zip codes in the PSAP's jurisdiction is correct and complete; and~~

~~(b) If a three (3) percent or more of a zip code is in more than one (1) PSAP's jurisdiction, the percentage of the zip code area allocated by the CMRS Board to the PSAP shall be equivalent to the percentage of CMRS connections within the zip code area.~~

~~(3) Within forty-five (45) days of receipt of the zip code list from~~

the CMRS Board, a PSAP may dispute zip code or percentage allocations by notifying the board and any other PSAP affected by the dispute, in writing, of the disputed zip code.

(a) Within five (5) working days of receipt of a notice of dispute, the board shall notify each PSAP affected by the dispute, by certified mail, return receipt requested. The affected PSAPs shall:

1. Negotiate a mutually agreeable resolution to the identified problem; and

2. Notify the CMRS Board of the result.

(b) If within the following thirty (30) days the CMRS Board is not notified of a mutually-agreeable resolution between the affected PSAPs, regarding the identified problem, the board shall determine the percentage of the identified zip code to be allocated to each PSAP.

(4) A PSAP may request a change to a previously-approved zip code allocation by submitting a written request to CMRS Board and the other affected PSAPs no later than thirty (30) days after the end of a calendar quarter.

(a) Within five (5) working days of receipt of a request, the board shall notify each affected PSAP, by certified mail, return receipt requested. The affected PSAPs shall:

1. Negotiate a mutually-agreeable resolution to the requested change; and

2. Notify the CMRS Board of the result.

(b) If, within the following thirty (30) days, the board is not notified of a mutually-agreeable resolution between the affected PSAPs, the board shall determine the percentage of the zip code to be allocated to each PSAP.

(5) A PSAP may appeal the final allocation of a zip code assignment in accordance with KRS Chapter 13B.

(6) The zip codes and percentage allocations of zip codes, as determined in this section, shall be used to determine the number of CMRS connections for each PSAP, as required by Section 4(3) of this administrative regulation.

Section 4. Calculation of Individual PSAP Disbursements Under the PSAP Wireless Workload Formula. (1) Within ninety (90) days after the end of calendar quarter, the board shall determine a value for each CMRS connection by dividing the total amount of funds remitted to the board during the collection period established for this disbursement by the total number of CMRS connections, as submitted in a quarterly report by the CMRS providers.

(2) The board shall multiply the value for each connection by the number of connections in each zip code, as reported in the quarterly reports by the CMRS providers.

(3) The CMRS Board shall divide the disbursement for a zip code that crosses a PSAP jurisdictional boundary according to the percentages established in Section 3 of this administrative regulation.

(4) A PSAP's workload disbursement shall consist of the total amounts for all zip codes or percentage of zip codes whose areas are served by a PSAP, as determined by subsections (2) and (3) of this section.

(5) Disbursement amounts attributed to zip codes whose allocation of CMRS connections is disputed by a PSAP shall be reserved by the board in the PSAP volume account until a allocation for that zip code is determined.

(a) Disputed funds shall remain in the CMRS fund accounts until disbursed.

(b) Interest accrued by disputed funds shall be deposited in the CMRS Fund and thereafter distributed in accordance with KRS 65.7627.

(c) Upon resolution of a dispute, the reserved funds shall be disbursed to the PSAPs with the next regular workload fund disbursement.

KENNETH O. MITCHELL, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2007, at 1 pm, in the Public Hearing Room of the first floor Conference Center at the Kentucky Transportation Cabinet Building, 200 Mero Street in Frankfort. Individuals interested in

being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. 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: Kenneth O. Mitchell, Executive Director, Office of the 911 Coordinator, Administrator, CMRS Board, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-3911, fax (502) 696-5293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kenneth O. Mitchell, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation relates to the disbursement of payments from the Public Safety Answering Point (PSAP) Workload fund to CMRS certified PSAPs.

(b) The necessity of this administrative regulation: KRS 65.7633(2)(c) establishes procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides specific details on procedures to comply with KRS 65.7631(3)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides procedures on the workload disbursement process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the regulation is removing language that is out of date.

(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation is removing language that is out of date.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is a clerical correction to remove dated language.

(d) How the amendment will assist in the effective administration of the statutes: No change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation currently applies to approximately 89 Phase II certified PSAPs that receive quarterly workload payments from the CMRS Fund.

(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 change.

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

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

(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: 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: No additional

fees or funding increases will be necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish fees and none were increased.

(9) TIERING: Is tiering applied? This regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 regulation currently applies to approximately 89 Phase II certified PSAPs that receive quarterly workload payments from the CMRS Fund.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The amendment relates to KRS 65.7621 through KRS 65.7643. KRS 65.7631 authorizes the actions taken by this regulation.

4. 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? No change.

(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 CMRS Fund was created for the purpose of funding PSAPs operated by local governments and Kentucky State Police in their initial and continuing efforts to provide wireless enhanced Phase II 911 service and in complying with FCC mandates. Since its inception the CMRS Fund has provided over \$54 million dollars to Kentucky's CMRS certified 911 Centers/PSAPs. This regulation specifically covers the workload payments which make up one half of the funds disbursed to these PSAPs.

(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:

**Kentucky Office of Homeland Security  
Office of the 911 Coordinator  
Commercial Mobile Radio Service Emergency  
Telecommunications Board  
(Amendment)**

**202 KAR 6:100. PSAP Phase II certification.**

RELATES TO: KRS 65.7621-65.7643, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7631(4)(e), 65.7633(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(4)(e) states that no PSAP shall be eligible to request or receive a disbursement from the CMRS fund unless and until the PSAP demonstrates that the PSAP has made the investment which is necessary to allow the PSAP to receive and utilize the data elements associated with wireless E911 service. KRS 65.7633 requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administra-



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tive regulations. This administrative regulation establishes the process by which a PSAP shall demonstrate its ability to receive and utilize the data elements associated with wireless E911 service.

Section 1. ~~[PSAPs Not Certified for CMRS Fund by June 30, 2004. After June 30, 2004,]~~ PSAPs not currently certified by the CMRS Board in accordance with 202 KAR 6:050 shall not be eligible for disbursement from the CMRS fund as provided in KRS 65.7631(3)(2) until they successfully complete both the requirements established in 202 KAR 6:050 and relevant sections of this administrative regulation.

Section 2. PSAPs Already Certified by the CMRS Board. (1) In order to maintain continued eligibility for CMRS funds, PSAPs that are currently certified by the CMRS Board in accordance with 202 KAR 6:050 shall no later than February 1, annually submit:

(a) An updated CMRS PSAP Certification Review Data Sheet, including any changes to the documentation supplied in their original Phase I Application; and

(b) Based on an actual tabulation of call traffic for at least the first week in each calendar quarter:

1. An annual count of wireless 911 calls received by the PSAP on dedicated 911 trunks; and

2. A count of nonwireless 911 calls received by the PSAP on dedicated 911 trunks.

(2) Certified PSAPs shall ~~[no later than July 1, 2004]:~~

(a) Make operational the hardware, software, and database necessary to receive and utilize the data elements associated with Phase II wireless 911 service;

(b) Notify the board, in writing, of their readiness to receive and utilize the data elements associated with Phase II wireless E911 service; and

(c) Supply to the board the following documentation:

1. An ~~[copy in]~~ electronic copy~~[form]~~ of the digital map of the PSAP's response area jurisdiction which meets the "Initial Mapping Criteria" in accordance with Section 3(1)(a) and Section 3(2) of this administrative regulation;

2. An electronic copy of the digital street centerlines which meets the "Initial Mapping Criteria" in accordance with Section 3(1)(c) and Section 3(2) of this administrative regulation; and

3.a. Copies of return receipts and letters sent "certified" requesting Phase II service from all wireless carriers licensed to operate in the PSAP's jurisdiction response area; or

b. Documentation from a wireless carrier licensed to operate within the PSAP response area that Phase II service is operational or has been requested by the PSAP;

4. Evidence from the LEC, 911 service provider, and any contracted 3<sup>rd</sup> party database services that all network elements necessary to the provision of Phase II wireless service are operational; and

5. Evidence from hardware and software vendors that all hardware and software necessary to utilize Phase II calls is now operational.

(3) Certified PSAPs shall present to the board updated mapping data sets once a year during the month of October ~~[no later than January 1, 2006:~~

~~(a) Have completed all of the elements listed in subsections (1) and (2) of this section;~~

~~(b) Supply to the board a copy in electronic form of a digital map of the PSAP's response area which meets the "Final Mapping Criteria" in accordance with Section 3(2) of this administrative regulation; and~~

~~(c) Supply to the board updated data sets as listed in subsection (2)(c)1 and paragraph (b) of this subsection twice a year, no later than the first week of the second and fourth calendar quarter.]~~

Section 3. Mapping Criteria. Regardless of the source of its data, a certified PSAP certified for CMRS funding shall be responsible for the accuracy of the geographic data and supporting data-bases used by the PSAP and those supplied to the CMRS Board.

(1) Initial mapping criteria. Initial Maps in use by PSAPs shall include the following elements:

(a) PSAP response boundaries and contact information, to include PSAP name, contact personnel, and ten (10) digit contact telephone number with twenty-four (24) hour, seven (7) day availability;

(b) Cell site location ~~[and cell-face propagation]~~ as used within the PSAP for Phase I mapping;

(c) Road centerlines shall be prepared and attributed with only items as outlined in the CMRS Board "PSAP Mapping Requirements" Table ~~[Street centerline geographic database for the response area attributed with a single validated street name per street segment containing: predirectional (pre\_dir), name of road (road\_name), type of road or street (road\_type), postdirectional (post\_dir), and local identifier (local\_id) as defined within Table 2 of the "Standards for Address-Enabled Road Centerlines" adopted by the Geographic Information Advisory Council (GIAC);]~~ and

(d) Address data shall be ninety (90) [ninety-five (95)] percent accurate audit as outlined in Section 4(4)(b) of this administrative regulation.

(2) The geospatial positional accuracy of all geographic elements submitted shall be within thirty-three (33) feet of its true location, plus the accuracy of the device used to conduct the test, for ninety (90) percent of all tested sites. ~~[Final mapping criteria: Maps in use by PSAPs after the January 1, 2006 deadline shall include:~~

~~(a) The elements described under initial mapping criteria of this section;~~

~~(b) Data shall be ninety-five (95) percent accurate as outlined in Section 4(4)(b) of this administrative regulation; and~~

~~(c) Street centerlines shall be prepared to accuracy standards and attributed with all items as outlined in Table 2 of the "Standards for Address-Enabled Road Centerlines" adopted by the Geographic Information Advisory Council (GIAC).]~~

Section 4. Geospatial Audit Requirements and Methodology. (1) ~~[After July 1, 2004,]~~ The CMRS Board shall audit the use and quality of geospatial data supplied by certified PSAPs. The PSAP is not responsible for the accuracy of data provided by wireless carriers.

(2) Audits shall be conducted:

(a) Utilizing equipment and methodology as approved and supplied by the CMRS Board or its designee and calibrated according to manufacturer's specifications; and

(b) Using tests approved by the board which includes GIS professionals and representatives of PSAPs certified for CMRS funding.

(3) Audits shall verify that upon receipt of a wireless 911 call the PSAP's mapping component shall:

(a) Display ~~[The PSAP's mapping component displays]~~ the X, Y coordinates on digital base maps used by the PSAP; and

(b) Identify ~~[identifies]~~ the incoming 911 call on the map display; and

(c) Identify the closest assigned address to the X,Y coordinates provided; or

(d) ~~[or (b)]~~ In absence of the X, Y coordinate information, the PSAP's mapping component identifies the cell site, and cell-face ~~[and cell-face propagation area of the incoming 911 call].~~

(4) Each PSAP's mapping shall be tested for the accuracy of road centerline data. A minimum of twenty (20) randomly-selected address points shall be tested in each PSAP response area.

(a) Tested points shall be distributed across the PSAP response area to yield a valid cross section of urban and rural environments. In those cases where PSAP response areas encompass multiple counties a sampling of a minimum of twenty (20) locations per county shall be tested ~~[Beginning on January 1, 2006, audits also shall:~~

~~(a) Verify the PSAP's mapping component and shall display both the caller's location and the closest assigned address to the location supplied by the 911 call; and~~

~~(b) Test for the following elements:~~

~~1. A minimum of 100 points shall be tested in each PSAP response area of which at least ten (10) points shall be within each unincorporated area, ten (10) points in each county seat and ten (10) points within each urban area of all fifth class cities within the PSAP's response area;]~~



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~~(b)[2-]~~ Tested locations shall plot on the correct side of the street as shown on the base map data supplied by the PSAP;

~~(c)[3-]~~ Tested locations shall plot within the correct cross streets as shown on the base map data supplied by the PSAP; and

~~(d)[4-]~~ Tested locations shall plot within one-tenth (1/10) of a mile of their location on PSAP supplied base maps.

Section 5. Audit Results. (1) The CMRS Board shall notify PSAPs, in writing, within ten (10) business days of audit results.

(2) If a PSAP fails to meet audit requirements, the CMRS Board shall:

(a) Allow the PSAP ninety (90) days from receipt of the audit notification to remedy the identified problems; and

(b) After receipt of the PSAP response, the board may schedule a reaudit.

(3) A PSAP shall be decertified for CMRS funding if it:

(a) Fails to remedy the problems identified by the board; or

(b) Fails a reaudit.

(4) The board shall notify the PSAP Director, in writing, return receipt requested, of its decision to decertify the PSAP.

Section 6. Appeals of Decertification. (1) A PSAP may request a review of its decertification by submitting a request in writing, within thirty (30) days of receipt of a decertification notice.

(a) The decertification shall be suspended pending the review by the board.

(b) The board shall schedule the requested review at a regularly scheduled board meeting, no later than ninety (90) days after receipt of the PSAP request.

(c) The board shall notify the PSAP of the scheduled review date, in writing, at least thirty (30) days prior to the meeting.

(d) After the board's review, the board shall notify, in writing, the PSAP of its decision within ten (10) business days.

(2) A PSAP that has been decertified may further appeal its decertification in accordance with KRS Chapter 13B.

Section 7. Status of PSAP Funds During an Appeal. (1) During a PSAP's appeal of its decertification, the PSAP's pro rata and workload payments shall be held in reserve in the appropriate CMRS fund account until resolution of all appeals by the PSAP.

(a) If the PSAP's appeal is successful, the reserved funds shall be disbursed to the PSAP with the next regular disbursement of each account.

(b) If the PSAP's appeal is unsuccessful, the reserved funds shall be disbursed to the remaining certified PSAPs with the next regular payments from each account in accordance with KRS 65.7631(3)(2).

(2) All interest accrued by reserved funds shall be distributed among the normal CMRS accounts in accordance with KRS 65.7627.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CMRS PSAP Certification Review" [(07/14/2003)]; and

(b) ~~The CMRS Board "PSAP Mapping Requirements" table as provided by the CMRS Board. [Table 2 from the "Standards for Address-enabled Road Centerlines" as approved by the Geographic Information Advisory Council (GIAC) on December 19, 2002.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the CMRS Board, 200 Mero Street [24 Millcreek Park], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KENNETH O. MITCHELL, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2007, at 1 pm, in the Public Hearing Room of the first floor Conference Center at the Kentucky Transportation Cabinet Building, 200 Mero Street in Frankfort. 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 notifica-

tion of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. 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: Kenneth O. Mitchell, Executive Director, Office of the 911 Coordinator, Administrator, CMRS Board, 200 Mero Street, Frankfort, Kentucky 40601, phone 502 564-3911, fax 502 696-5293.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kenneth O. Mitchell, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the requirements that PSAPs (Public Safety Answering Points) must meet to satisfy "PSAP readiness" as established by the FCC (Federal Communications Commissions) and thereby continue their eligibility for CMRS funds.

(b) The necessity of this administrative regulation: KRS 65.7633(2)(c) requires the CMRS Board to determine the basis for reviewing and approving disbursements from the CMRS Fund and as required by KRS 65.7631(2)(b) these funds are used by PSAPs to meet the requirements of wireless E911 established by the FCC.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.7633(2)(c) establishes guidelines and procedures for its use in reviewing and approving disbursements from the CMRS Fund. This regulation determines the specific documentation and tests of a PSAPs ability to handle the data elements required by the FCC to handle wireless Enhanced 911 calls.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation makes clear what PSAPs must do to continue to qualify for CMRS 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: The amendment to the regulation clarifies the process to which PSAPs provide annual 911 mapping updates to the CMRS Board and also the process and methodology for the board to complete Geospatial audits of a PSAPs mapping.

(b) The necessity of the amendment to this administrative regulation: The amendment is essential to the validation by the CMRS Board of the PSAPs ability to accurately locate wireless 911 calls.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the mapping criteria and does not change any impact related to authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater efficiency in meeting the goals and objectives of CMRS statutes and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 89 Public Safety Answering Points (PSAPs) operated by local governments and Kentucky State Police.

(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: PSAPs will have clear direction what they must do with CMRS funds to meet the requirements established by the FCC in handling Phase II wireless Enhanced 911 calls.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional substantive financial impact

beyond what is already required by state statute and the FCC.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This completes the process of migrating their call taking hardware, software, network elements, and data systems to receive and display accurately the location (latitude and longitude) of wireless callers to their 911 center.

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

(a) Initially: The CMRS Board provided education through seminars and other methods to PSAP directors on how to meet the documentation, hardware, software, and data requirements. This administrative regulation is also a part of the Phase II certification process.

(b) On a continuing basis: PSAPs will have to continue to maintain the geospatial data for their communities in order to accurately determine the location of wireless 911 callers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative budget of the CMRS Board is the source to cover the costs of implementation and enforcement of this regulation. The CMRS Board receives its budget allocation solely from its statutory allocation of the CMRS surcharges remitted to the CMRS 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 additional fees or funding increases will be necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish fees and none were increased.

(9) TIERING: Is tiering applied? This regulation applies equally to all regulated entities.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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? Enhanced 911 Centers/PSAPs (Public Safety Answering Points).

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation relates to the Enhanced 911 center/PSAP and the related addressing and mapping authority providing data for the center's operation. KRS 65.7629, 65.7631, and 65.7633 require:

the CMRS Board to develop guidelines for its review of requests for funding from local governments; promulgate regulations for this purpose; and that PSAPs use CMRS funds to achieve compliance with the FCC's requirement contained in its docket 94-102, that PSAPs be able to handle the data elements associated with a wireless call.

4. 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 is an amendment to an existing regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The CMRS Fund was created for the purpose of funding PSAPs operated by local governments and Kentucky State Police in their initial and continuing efforts to provide wireless enhanced Phase II 911 service and in complying with FCC mandates. Since its inception the CMRS Fund has provided over \$54 million dollars to Kentucky's CMRS certified 911 Centers/PSAPs.

(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 cover funding issues. The

CMRS Fund is discussed in KRS 65.7621 – KRS 65.7643.

(c) How much will it cost to administer this program for the first year? The funds to cover the costs associated with conducting the Geospatial audits by the CMRS Board in this regulation will come from CMRS administrative funds.

(d) How much will it cost to administer this program for subsequent years? The funds to cover the costs associated with conducting the Geospatial audits by the CMRS Board in this regulation will come from CMRS administrative funds.

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. FCC docket 94-102 requires wireless carriers deliver to Public Safety Answering Points (PSAPs) calls to 911 from wireless consumers provided that the PSAPs were able to handle the required data elements providing call back numbers and location data for the caller's handset.

2. State compliance standards. State and local governments were to establish rules and regulations and provide funding for local governments to meet the general requirement that PSAPs be able to handle the data elements supplied with a 911 call.

3. Minimum or uniform standards contained in the federal mandate. The FCC in its docket specifically stated that state and local governments should establish rules and regulations for compliance with its mandate. In keeping with this ruling, Kentucky and other states passed CMRS statutes creating funds and governing bodies to meet the intent of the FCC mandate's provision.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? As stated above, the FCC requires that PSAPs be able to utilize the supplied data.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards imposed by this regulation are not stricter or additional to that imposed by the federal mandate.

**COMMERCE CABINET**

**Kentucky Department of Fish and Wildlife Resources  
(Amendment)**

**301 KAR 5:030. Purchasing licenses and obtaining replacement licenses.**

RELATES TO: KRS 150.090, 150.170, 150.175, 150.195, 150.235, 150.990

STATUTORY AUTHORITY: KRS 150.170, 150.175, 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(1) authorizes the department to promulgate administrative regulations pertaining to the issuance of licenses. KRS 150.175 authorizes the department to require proof of residency and age or disability for those eligible to purchase a senior/disabled combination license. This administrative regulation specifies the information required to purchase a POS license, the information required on the license, how replacement licenses may be obtained, and how to obtain a disability authorization card.

Section 1. Information Required to Purchase a POS License. A person buying a POS license shall furnish the license agent the following information:

- (1) The license applicant's date of birth; and
- (2) An identification number, which shall be:

- (a) The license applicant's:
  - 1. Social Security number; or
  - 2. Fish and Wildlife Identification number; or
- (b) If buying a senior/disabled license:

- 1. If age sixty-five (65) or over, proof of age and Kentucky resi-

dency; or

2. If under age sixty-five (65), an unexpired disability authorization card issued by the department and proof of Kentucky residency.

Section 2. Providing Information on Licenses. (1) Before performing an act authorized by the license, the license holder shall:

(a) Sign the POS license; and  
 (b) Provide the following information, legibly in ink or indelible pencil, in the blanks provided on the POS license:

1. Address, including city, state and zip code;
2. Eye color;
3. Hair color;
4. Sex;
5. Height; and
6. Weight.

(2) A license not completed as specified in this section shall not be valid.

(3) A senior/disabled combination license shall not be valid unless accompanied by:

(a) Proof of age and Kentucky residency, if the license recipient is age sixty-five (65) or over; or  
 (b) An unexpired disability authorization card issued to the license recipient, if the license recipient is under age sixty-five (65) and proof of Kentucky residency.

Section 3. Replacement of Lost or Destroyed Licenses. (1) A person whose license is lost or destroyed may:

(a) Request a replacement license from the department; or  
 (b) Purchase a replacement license and request a refund from the department.

(2) A person requesting a replacement license or refund shall provide the department with:

(a) His name and complete mailing address;  
 (b) The identification number used to purchase the original license; and

(c) One (1) of the following:

1. A replacement fee of five (5) [~~four (4)~~] dollars; or  
 2. The license number of the license he bought to replace the lost or destroyed license.

(3) If the department can verify the purchase of the original license, it shall:

(a) Void the original license; and  
 (b) Issue a:  
 1. Replacement license; or  
 2. Refund check for the amount of the license, less a five (5) [~~four (4)~~] dollar replacement fee.

(4) A person shall not use, or present to a conservation officer or other peace officer, a license voided by the issuance of a replacement.

(5) The department shall not refund a license replacement fee.

Section 4. Duplicate License Refunds. A person may obtain refunds for a duplicate POS license:

(1) From the license agent who completed the transaction, if:

(a) The request is made on the same day the license was issued; and

(b) The original license is surrendered to the license agent; or

(2) By furnishing the department with:

(a) The duplicate license;

(b) The name and mailing address of the person requesting the refund;

(c) The license number of the original license; and

(d) An explanation of the reason for the refund request.

(3) Upon receipt of the refund request and duplicate license, and subsequent verification of the original purchase, the department shall issue a refund check for the amount of the license less a fee of five (5) [~~four (4)~~] dollars.

Section 5. Buying Licenses for Another. A person purchasing a POS license for another person shall provide the license agent with the information about the person for whom the license is being purchased as required in Section 1 of this administrative regulation. A person other than a parent or guardian may not purchase a

junior hunting license for another person.

Section 6. Obtaining a Disability Authorization Card. (1) To verify that he qualifies for a senior/disabled combination license because of a disability as specified in KRS 150.175, a person shall provide the department proof of Kentucky residency and one (1) of the following:

(a) A "TPQY long" form from his local federal Social Security office certifying that he is receiving disability benefits from Social Security;

(b) A copy of his disability rating showing at least a fifty (50) percent military service-connected disability;

(c) A letter of verification from the United States Railroad Retirement Board certifying that the applicant has been declared totally and permanently disabled;

(d) A letter, on that state board's letterhead, certifying that the applicant has been declared totally and permanently disabled by another state's workers' compensation board;

(e) A letter of verification from the Kentucky Teacher's Retirement System certifying that the applicant has been declared totally and permanently disabled from teaching; or

(f) A letter of verification from the U.S. Office of Personnel Management certifying that the applicant has been declared totally and permanently disabled.

(2) A person declared totally and permanently disabled by the Kentucky State Workers' Compensation Board shall:

(a) Obtain a Disability Workers Compensation Exemption form from the department; and

(b) Complete the form and mail it to the address given on the form.

(3) Upon receipt of the verification required by subsection (1) of this section or upon receipt of verification from the state Worker's Compensation Board, the department shall issue a card certifying the person is eligible to purchase a senior/disabled combination license.

Section 7. (1) Duration of Disability Exemption. Certification by the Social Security Administration, Kentucky Teacher's Retirement System, or [the United States Railroad Retirement Board,] a state worker's compensation board [or certification of at least fifty (50) percent military service-connected disability] shall remain valid for three (3) years after issue of the disability authorization card.

(2) Certification by the United States Railroad Retirement Board, U.S. Office of Personnel Management, or certification of at least fifty (50) percent military service-connected disability shall remain valid until the license holder turns sixty-five (65) years of age or no longer requires the disability exemption.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Disability Authorization Card", March 2001; and

(b) "Disability Authorization Card Instructions", March 2001.

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

MARK S. CRAMER, Deputy Commissioner

For, JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary

APPROVED BY AGENCY: May 9, 2007

FILED WITH LRC: May 11, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2007, 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 by July 2, 2007.

CONTACT PERSON: Rose Mack, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the means and methods of obtaining licenses, permits and replacement licenses (in addition to the replacement fee) as provided by the Department of Fish and Wildlife Resources.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the public and potential customers of the method for obtaining licenses, permits and replacement licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department of Fish and Wildlife Resources is authorized by KRS 150.175 to promulgate administrative regulations establishing licenses and permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes which information is required for license purchases in accordance with KRS 150.195.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This amendment outlines revisions to the existing handling fee charged for a replacement license or refund.

(a) How the amendment will change this existing administrative regulation: This amendment will revise the existing handling fee charged for a replacement license or refund and extends the duration of the disability exemption for license holders certified by the United States Railroad Retirement Board, the U.S. Office of Personnel Management, and certification of at least 50 percent military service-connected disability.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to inform the public and potential customers of changes to the existing handling fee. The revision to the handling fee is necessary to offset increased operating costs to the department. The revision to the duration of the disability license eliminates certain individuals having to reapply for a disability license every three years. The three groups identified in the administrative regulation are agencies that certify their constituents as total and permanently disabled or 50 percent service connected.

(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: Approximately one million sport license and permit buyers will be affected by the change in requirements in this regulation. Approximately 1,500 license holders received a replacement or refund last year. Approximately 10,000 disability authorization cardholders will be affected by the revision the duration of disability exemption.

(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: If a license holder loses their license, they would have to request a replacement or a refund after purchasing a duplicate license. The handling fee on these replacements or refunds will increase by \$1. Persons wishing to obtain a replacement license will have to pay a \$5 handling fee, the \$5

handling fee will be taken out of the refund requested for a duplicate license purchase. Persons qualifying for a disability card under United States Railroad Retirement Board, U.S. Office of Personnel management, or certification of at least 50 percent military service-connected will only have to apply for their authorization once.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The sports buyer will be required to pay \$1 more for a replacement handling fee or refund handling fee. There will be no cost for persons qualifying for a disability card under United States Railroad Retirement Board, U.S. Office of Personnel management, or certification of at least 50 percent military service-connected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The customer will be able to legally participate in hunting, fishing and other wildlife-related activities governed by the Department of Fish and Wildlife Resources. Persons qualifying for a disability card under United States Railroad Retirement Board, U.S. Office of Personnel management, or certification of at least 50 percent military service-connected will only have to apply once and not every three years.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: See (5)(a) above.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment to the administrative regulation will directly increase the amount charged for the handling of duplicate license refunds or replacement licenses.

(9) TIERING: Is tiering applied? No tiering is applied as those affected by the administrative regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Administrative Services Division will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Department of Fish and Wildlife Resources is authorized by KRS 150.195 to promulgate administrative regulations establishing methods for the control, issuance and distribution of licenses and permits.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional cost to the agency to implement this administrative regulation. The revisions to the handling charge will generate approximately \$1,500 annually, if the level of refunds and replacement licenses stay the same.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional cost to the agency to implement this administrative regulation. The revisions to the handling charge will gener-

ate approximately \$1,500 annually, if the level of refunds and replacement licenses stay the same.

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

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department for Environmental Protection**  
**Division for Air Quality**  
**(Amendment)**

**401 KAR 57:002. 40 C.F.R. Part 61 national emission standards for hazardous air pollutants.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 61.01-61.139, 61.160-61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601, 7602

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 61.01-61.139, 61.160-61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601, 7602

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. This administrative regulation establishes [incorporates by reference] the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 61.01 through [to] 61.139 and 61.160 through [to] 61.358. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 61 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 40 C.F.R. 61.01 through 61.139 and 61.160 through 61.358, Subparts A through L and N through FF. [For purposes of 40 C.F.R. 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 61, "Part 61 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 40 C.F.R. 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF).]

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 61.01 through [to] 61.139 and 61.160 through [to] 61.358, Subparts A through L and N through FF [(Subparts A to L and N to FF)]. These sources shall comply with the following:

- (1) The applicable provisions in 40 C.F.R. 61.01 through [to] 61.19 (Subpart A), "General Provisions";
- (2) The applicable methods, procedures, and reporting requirements contained in 40 C.F.R. Part 61, Appendices A through E; and
- (3) The applicable Part 61 NESHAP.

[Section 3. Incorporation by Reference. (1) The following material is incorporated by reference as published in the Code of Fed-

eral Regulations, 40 C.F.R. Parts 61 to 62, July 1, 2003:

- (a) 40 C.F.R. 61.01 to 61.19 (Subpart A), "General Provisions";
  - (b) 40 C.F.R. 61.20 to 61.26 (Subpart B), "National Emission Standards for Radon Emissions from Underground Uranium Mines";
  - (c) 40 C.F.R. 61.30 to 61.34 (Subpart C), "National Emission Standard for Beryllium";
  - (d) 40 C.F.R. 61.40 to 61.44 (Subpart D), "National Emission Standard for Beryllium Rocket Motor Firing";
  - (e) 40 C.F.R. 61.50 to 61.56 (Subpart E), "National Emission Standard for Mercury";
  - (f) 40 C.F.R. 61.60 to 61.71 (Subpart F), "National Emission Standard for Vinyl Chloride";
  - (g) 40 C.F.R. 61.90 to 61.97 (Subpart H), "National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities";
  - (h) 40 C.F.R. 61.100 to 61.108 (Subpart I), "National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H";
  - (i) 40 C.F.R. 61.110 to 61.112 (Subpart J), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene";
  - (j) 40 C.F.R. 61.120 to 61.127 (Subpart K), "National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants";
  - (k) 40 C.F.R. 61.130 to 61.139 (Subpart L), "National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants";
  - (l) 40 C.F.R. 61.160 to 61.165 (Subpart N), "National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants";
  - (m) 40 C.F.R. 61.170 to 61.177 (Subpart O), "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters";
  - (n) 40 C.F.R. 61.180 to 61.186 (Subpart P), "National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities";
  - (o) 40 C.F.R. 61.190 to 61.193 (Subpart Q), "National Emission Standards for Radon Emissions from Department of Energy Facilities";
  - (p) 40 C.F.R. 61.200 to 61.210 (Subpart R), "National Emission Standards for Radon Emissions from Phosphogypsum Stacks";
  - (q) 40 C.F.R. 61.220 to 61.226 (Subpart T), "National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings";
  - (r) 40 C.F.R. 61.240 to 61.247 (Subpart V), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources)";
  - (s) 40 C.F.R. 61.250 to 61.256 (Subpart W), "National Emission Standards for Radon Emissions from Operating Mill Tailings";
  - (t) 40 C.F.R. 61.270 to 61.277 (Subpart Y), "National Emission Standard for Benzene Emissions from Benzene Storage Vessels";
  - (u) 40 C.F.R. 61.300 to 61.306 (Subpart BB), "National Emission Standard for Benzene Emissions from Benzene Transfer Operations";
  - (v) 40 C.F.R. 61.340 to 61.358 (Subpart FF), "National Emission Standard for Benzene Waste Operations";
  - (w) "Appendix A to Part 61, National Emission Standards for Hazardous Air Pollutants, Compliance Status Information";
  - (x) "Appendix B to Part 61, Test Methods";
  - (y) "Appendix C to Part 61, Quality Assurance Procedures";
  - (z) "Appendix D to Part 61, Methods for Estimating Radionuclide Emissions"; and
  - (aa) "Appendix E to Part 61, Compliance Procedures Methods for Determining Compliance With Subpart I".
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;
  - (b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;
  - (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

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(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2090;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) Copies of the C.F.R. are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at <http://bookstore.gpo.gov>.

(4) Copies of the C.F.R. and Federal Register are available electronically at <http://gpoaccess.gov/cfr/index.html>.

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this amendment will be held on June 25, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on July 2, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

**CONTACT PERSON:** Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone 502 573-3382, fax 502 573-3787, and email: [gerry.ennis@ky.gov](mailto:gerry.ennis@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the National Emission Standards for Hazardous Air Pollutants, (Part 61 NESHAP), Subparts A through L and N through FF, codified in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, which contains the NESHAP source categories and standards for compliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of the Part 61 NESHAP and to comply with the requirements in KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the federal Part 61 NESHAP requirements shall comply with this administrative regulation.

(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 revises the text according to KRS Chapter 13A. requirements. It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: Recent amendments to KRS Chapter 13A.2261 require agencies to draft new language to existing administrative regulations that incorporate federal rules by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to implement and enforce the federal Part 61 NESHAP rules and standards in order to retain these authorities from the U.S. EPA.

(d) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 61 requirements will continue to work with the state rather than the U.S. EPA for compliance demonstration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are major sources of hazardous air pollutants as defined in 40 C.F.R. Part 61 are subject to this regulation. The Division for Air Quality will remain as the enforcement agency for these standards.

(4) Provide an assessment 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: Sources subject to the Part 61 NESHAP will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(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 shall comply with the federal Part 61 NESHAP requirements and this 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 are already subject to the federal Part 61 NESHAP. There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 61 NESHAP will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used 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 is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 61 NESHAP source categories.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. According to the delegation provisions under 42 U.S.C. 7412(l), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Part 61 NESHAP for stationary sources located within the



Commonwealth.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7412 requires that the U.S. EPA promulgate National Emission Standards for Hazardous Air Pollutants. These NESHAP standards and requirements for compliance are codified in 40 C.F.R. 61.01 through 61.139 and 61.160 through 61.358.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. 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 Division for Air Quality will implement this program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 61.01-61.139, 61.160-61.358, 42 U.S.C. 7401, 7412, 7414, 7416, 7601, 7602.

4. 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 generates no 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 regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

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

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

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

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department for Environmental Protection**  
**Division for Air Quality**  
**(Amendment)**

**401 KAR 58:025. 40 C.F.R. Part 61 national emission standard for asbestos.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 C.F.R. 61.140-61.157, 42 U.S.C. 7401, 7412, 7414, 7416, 7601[; 68 Fed. Reg. 54793 September 18, 2003]

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224. 20-320, 224.99-010, 40 C.F.R. 61.140-61.157, 42 U.S.C. 7401, 7412, 7414, 7416, 7601[; 68 Fed. Reg. 54793 September 18, 2003]

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. This administrative regulation establishes [incorporates by reference] the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 through [to] 61.157[; as amended in 68 Fed. Reg. 54793 September 18, 2003]. Delegation of implementation and enforcement authority for the federal NESHAP Program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 61 NESHAP" means the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 through 61.157, Subpart M. [For purposes of 40 C.F.R. 61.140 to 61.157, Subpart M, "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) ~~For purposes of 40 C.F.R. Part 61, "Part 61 NESHAP" means the National Emission Standard for Asbestos, codified in 40 C.F.R. 61.140 to 61.157, Subpart M.]~~

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 61.140 through [to] 61.157, Subpart M. Owners and contractors of these sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 61.140 through [to] 61.157, Subpart M, "National Emission Standard for Asbestos";

(2) The applicable provisions and requirements contained in "Appendix A to Subpart M of Part 61-Interpretive Rule Governing Roof Removal Operations"; and

(3) Complete and submit Form DEP 7036 to the Division for Air Quality prior to renovation or demolition. This form is incorporated by reference in Section 3 of this administrative regulation. [The applicable revisions in "Part 61-Subpart M-Amended".]

Section 3. Incorporation by Reference. (1) "Form DEP 7036, Notification of Asbestos Abatement/Demolition/Renovation, May 1998", is incorporated by reference. [The following material is incorporated by reference:

(a) ~~40 C.F.R. 61.140 to 61.157, Subpart M, "National Emission Standard for Asbestos" and "Appendix A to Subpart M of Part 61-Interpretive Rule Governing Roof Removal Operations", as published July 1, 2003;~~

(b) ~~"Part 61-Subpart M-Amended", as published 68 Fed. Reg. 54793, September 18, 2003; and~~

(c) ~~"Form DEP 7036, Notification of Asbestos Abatement/Demolition/Renovation, May 1998".]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) Form DEP 7036 is available electronically at <http://www.air.ky.gov/>. [Copies of the C.F.R. and Federal Register



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are available for sale from the Superintendent of documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at <http://bookstore.gpo.gov>.

(4) Copies of the C.F.R. and Federal Register are available electronically at <http://gpoaccess.gov/cfr/index.html>.]

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this amendment will be held on June 25, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on July 2, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

**CONTACT PERSON:** Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and email [gerry.ennis@ky.gov](mailto:gerry.ennis@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the National Emission Standards for Hazardous Air Pollutants, (Part 61 NESHAP), Subpart M, codified in the Code of Federal Regulations, 40 C.F.R. Parts 61 to 62, which contains the Asbestos NESHAP source categories and standards for compliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of the Part 61 Asbestos NESHAP and to comply with the requirements in KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the federal Part 61 Asbestos NESHAP requirements shall comply with this administrative regulation.

(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 revises the text according to KRS 13A. requirements. It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: Recent amendments to KRS 13A.2261 require agencies to draft new language to existing administrative regulations that incorporate federal rules by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to implement and enforce the federal Part 61 Asbestos NESHAP rules and standards in order to retain these authorities from the U.S. EPA.

(d) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 61, Subpart M requirements will continue to work with the state rather than the U.S. EPA for compliance demonstration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are subject to the Part 61 Asbestos NESHAP as defined in 40 C.F.R. Part 61, Subpart M are subject to this regulation. The Division for Air Quality will remain as the enforcement agency for these standards.

(4) Provide an assessment 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: Sources subject to the Part 61 Asbestos NESHAP will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(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 shall comply with the federal Part 61 Asbestos NESHAP and this 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 are already subject to the federal Part 61 Asbestos NESHAP. There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 61 Asbestos NESHAP will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used 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 is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 61 NESHAP for Asbestos.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. According to the delegation provisions under 42 U.S.C. 7412(l), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Asbestos NESHAP.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7412 requires that the U.S. EPA promulgate National Emission Standards for Hazardous Air Pollutants. The Asbestos NESHAP standards and requirements for compliance are codified in 40 C.F.R. 61.140 through 61.157.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is

identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. 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 Division for Air Quality will implement this program. Any unit, part or division of state or local government that intends to be involved in asbestos renovation or demolition will be subject to this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 C.F.R. 61.140-61.157, 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

4. 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 generates no 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 regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENVIRONMENTAL AND PUBLIC PROTECTION**  
**Department for Environmental Protection**  
**Division for Air Quality**  
**(Amendment)**

**401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.1-60.19, 60.40-60.506, 60.540-60.668, ~~60.680-60.4420~~ ~~[60.680-60.2875]~~, 42 U.S.C. 7411

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.1-60.19, 60.40-60.506, 60.540-60.668, ~~60.680-60.4420~~ ~~[60.680-60.2875]~~, 42 U.S.C. 7411

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. This administrative regulation establishes [incorporates by reference] the Standards of Performance for New Stationary Sources (NSPS) codified in 40 C.F.R. 60.1 through [to] 60.19, 60.40 through [to] 60.506, 60.540 through [to] 60.668, and 60.680 through 60.4420 [to 60.2875]. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7411(c)(1).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 60 NSPS" means the Standards of Performance for New Stationary Sources codified in 40 C.F.R. 60.1 through 60.19, 60.40 through 60.506, 60.540 through 60.668, 60.680 through 60.4420, Subparts A, D through XX, BBB through NNN, and PPP through KKKK.

[For purposes of 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, (Subparts A, D to XX, BBB to NNN, and PPP to DDDD), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 60, "Part 60 NSPS" means the Standards of Performance for New Stationary Sources codified in 40 C.F.R. 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.668, 60.680 to 60.2875, (Subparts A, D to XX, BBB to NNN, and PPP to DDDD).]

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 60.1 through [to] 60.19, 60.40 through [to] 60.506, 60.540 through [to] 60.668, and 60.880 through 60.4420, Subparts A, D through XX, BBB through NNN, and PPP through KKK [60.680 to 60.2875 (Subparts A, D to XX, BBB to NNN, and PPP to DDDD)]. These sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 60.1 through [to] 60.19 (Subpart A), "General Provisions";

(2) The applicable methods, procedures, and reporting requirements contained in 40 C.F.R. Part 60, Appendices A through F; and

(3) The applicable Part 60 NSPS.

[Section 3. Incorporation by Reference. (1) The following material is incorporated by reference as published in the Code of Federal Regulations, 40 C.F.R. Part 60, July 1, 2003:

(a) 40 C.F.R. 60.1 to 60.19 (Subpart A), "General Provisions";

(b) 40 C.F.R. 60.40 to 60.46 (Subpart D), "Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971";

(c) 40 C.F.R. 60.40a to 60.49a (Subpart Da), "Standards of Performance for Electric Utility Steam-Generating Units for Which Construction is Commenced After September 18, 1978";

(d) 40 C.F.R. 60.40b to 60.49b (Subpart Db), "Standards of Performance for Industrial-Commercial-Institutional Steam-Generating Units";

(e) 40 C.F.R. 60.40c to 60.48c (Subpart Dc), "Standards of Performance for Small Industrial-Commercial-Institutional Steam-Generating Units";

(f) 40 C.F.R. 60.50 to 60.54 (Subpart E), "Standards of Performance for Incinerators";

(g) 40 C.F.R. 60.50a to 60.59a (Subpart Ea), "Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and On or Before September 20, 1994";

(h) 40 C.F.R. 60.50b to 60.59b (Subpart Eb), "Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or For Which Modification or Reconstruction is Commenced After June 19, 1996";

(i) 40 C.F.R. 60.50c to 60.58c (Subpart Ec), "Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996";

(j) 40 C.F.R. 60.60 to 60.66 (Subpart F), "Standards of Performance for Portland Cement Plants";

(k) 40 C.F.R. 60.70 to 60.74 (Subpart G), "Standards of Performance for Nitric Acid Plants";

(l) 40 C.F.R. 60.80 to 60.85 (Subpart H), "Standards of Performance for Sulfuric Acid Plants";

(m) 40 C.F.R. 60.90 to 60.93 (Subpart I), "Standards of Performance for Hot Mix Asphalt Facilities";

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- (n) 40 C.F.R. 60.100 to 60.109 (Subpart J), "Standards of Performance for Petroleum Refineries";
- (o) 40 C.F.R. 60.110 to 60.113 (Subpart K), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978";
- (p) 40 C.F.R. 60.110a to 60.115a (Subpart Ka), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984";
- (q) 40 C.F.R. 60.110b to 60.117b (Subpart Kb), "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984";
- (r) 40 C.F.R. 60.120 to 60.123 (Subpart L), "Standards of Performance for Secondary Lead Smelters";
- (s) 40 C.F.R. 60.130 to 60.133 (Subpart M), "Standards of Performance for Secondary Brass and Bronze Production Plants";
- (t) 40 C.F.R. 60.140 to 60.144 (Subpart N), "Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973";
- (u) 40 C.F.R. 60.140a to 60.145a (Subpart Na), "Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983";
- (v) 40 C.F.R. 60.150 to 60.156 (Subpart O), "Standards of Performance for Sewage Treatment Plants";
- (w) 40 C.F.R. 60.160 to 60.166 (Subpart P), "Standards of Performance for Primary Copper Smelters";
- (x) 40 C.F.R. 60.170 to 60.176 (Subpart Q), "Standards of Performance for Primary Zinc Smelters";
- (y) 40 C.F.R. 60.180 to 60.186 (Subpart R), "Standards of Performance for Primary Lead Smelters";
- (z) 40 C.F.R. 60.190 to 60.195 (Subpart S), "Standards of Performance for Primary Aluminum Reduction Plants";
- (aa) 40 C.F.R. 60.200 to 60.204 (Subpart T), "Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants";
- (bb) 40 C.F.R. 60.210 to 60.214 (Subpart U), "Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants";
- (cc) 40 C.F.R. 60.220 to 60.224 (Subpart V), "Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants";
- (dd) 40 C.F.R. 60.230 to 60.234 (Subpart W), "Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants";
- (ee) 40 C.F.R. 60.240 to 60.244 (Subpart X), "Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities";
- (ff) 40 C.F.R. 60.250 to 60.254 (Subpart Y), "Standards of Performance for Coal Preparation Plants";
- (gg) 40 C.F.R. 60.260 to 60.266 (Subpart Z), "Standards of Performance for Ferroalloy Production Facilities";
- (hh) 40 C.F.R. 60.270 to 60.276 (Subpart AA), "Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983";
- (ii) 40 C.F.R. 60.270a to 60.276a (Subpart AAa), "Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983";
- (jj) 40 C.F.R. 60.280 to 60.285 (Subpart BB), "Standards of Performance for Kraft Pulp Mills";
- (kk) 40 C.F.R. 60.290 to 60.296 (Subpart CC), "Standards of Performance for Glass Manufacturing Plants";
- (ll) 40 C.F.R. 60.300 to 60.304 (Subpart DD), "Standards of Performance for Grain Elevators";
- (mm) 40 C.F.R. 60.310 to 60.316 (Subpart EE), "Standards of Performance for Surface Coating of Metal Furniture";
- (nn) 40 C.F.R. 60.330 to 60.335 (Subpart GG), "Standards of Performance for Stationary Gas Turbines";
- (oo) 40 C.F.R. 60.340 to 60.344 (Subpart HH), "Standards of Performance for Lime Manufacturing Plants";
- (pp) 40 C.F.R. 60.370 to 60.374 (Subpart KK), "Standards of Performance for Lead-Acid Battery Manufacturing Plants";
- (qq) 40 C.F.R. 60.380 to 60.386 (Subpart LL), "Standards of Performance for Metallic Mineral Processing Plants";
- (rr) 40 C.F.R. 60.390 to 60.398 (Subpart MM), "Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations";
- (ss) 40 C.F.R. 60.400 to 60.404 (Subpart NN), "Standards of Performance for Phosphate Rock Plants";
- (tt) 40 C.F.R. 60.420 to 60.424 (Subpart PP), "Standards of Performance for Ammonium Sulfate Manufacture";
- (uu) 40 C.F.R. 60.430 to 60.435 (Subpart QQ), "Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing";
- (vv) 40 C.F.R. 60.440 to 60.447 (Subpart RR), "Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations";
- (ww) 40 C.F.R. 60.450 to 60.456 (Subpart SS), "Standards of Performance for Industrial Surface Coating: Large Appliances";
- (xx) 40 C.F.R. 60.460 to 60.466 (Subpart TT), "Standards of Performance for Metal Coil Surface Coating";
- (yy) 40 C.F.R. 60.470 to 60.474 (Subpart UU), "Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture";
- (zz) 40 C.F.R. 60.480 to 60.489 (Subpart VV), "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry";
- (aaa) 40 C.F.R. 60.490 to 60.496 (Subpart WW), "Standards of Performance for the Beverage Can Surface Coating Industry";
- (bbb) 40 C.F.R. 60.500 to 60.506 (Subpart XX), "Standards of Performance for Bulk Gasoline Terminals";
- (ccc) 40 C.F.R. 60.540 to 60.548 (Subpart BBB), "Standards of Performance for the Rubber Tire Manufacturing Industry";
- (ddd) 40 C.F.R. 60.560 to 60.566 (Subpart DDD), "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry";
- (eee) 40 C.F.R. 60.580 to 60.585 (Subpart FFF), "Standards of Performance for Flexible Vinyl and Urethane Coating and Printing";
- (fff) 40 C.F.R. 60.590 to 60.593 (Subpart GGG), "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries";
- (ggg) 40 C.F.R. 60.600 to 60.604 (Subpart HHH), "Standards of Performance for Synthetic Fiber Production Facilities";
- (hhh) 40 C.F.R. 60.610 to 60.618 (Subpart III), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes";
- (iii) 40 C.F.R. 60.620 to 60.625 (Subpart JJJ), "Standards of Performance for Petroleum Dry Cleaners";
- (jjj) 40 C.F.R. 60.630 to 60.636 (Subpart KKK), "Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants";
- (kkk) 40 C.F.R. 60.640 to 60.648 (Subpart LLL), "Standards of Performance for Onshore Natural Gas Processing: SO<sub>2</sub> Emissions";
- (lll) 40 C.F.R. 60.660 to 60.668 (Subpart NNN), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations";
- (mmm) 40 C.F.R. 60.680 to 60.685 (Subpart PPP), "Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants";
- (nnn) 40 C.F.R. 60.690 to 60.699 (Subpart QQQ), "Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems";
- (ooo) 40 C.F.R. 60.700 to 60.708 (Subpart RRR), "Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes";
- (ppp) 40 C.F.R. 60.710 to 60.718 (Subpart SSS), "Standards of Performance for Magnetic Tape Coating Facilities";
- (qqq) 40 C.F.R. 60.720 to 60.726 (Subpart TTT), "Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines";
- (rrr) 40 C.F.R. 60.730 to 60.737 (Subpart UUU), "Standards of

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Performance for Calciners and Dryers in Mineral Industries";

(sss) 40 C.F.R. 60.740 to 60.748 (Subpart VAV), "Standards of Performance for Polymeric Coating of Supporting Substrates Facilities";

(ttt) 40 C.F.R. 60.750 to 60.759 (Subpart WVV), "Standards of Performance for Municipal Solid Waste Landfills";

(uuu) 40 C.F.R. 60.1000 to 60.1465 (Subpart AAAA), "Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001";

(vvv) 40 C.F.R. 60.1500 to 60.1940 (Subpart BBBB), "Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999";

(www) 40 C.F.R. 60.2000 to 60.2265 (Subpart CCCC), "Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced On or After June 1, 2001";

(xxx) 40 C.F.R. 60.2500 to 60.2875 (Subpart DDDD), "Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999";

(yyy) "Appendix A to Part 60, Test Methods";

(zzz) "Appendix B to Part 60, Performance Specifications";

(aaa) "Appendix C to Part 60, Determination Of Emission Rate Change";

(bbb) "Appendix D to Part 60, Required Emission Inventory Information"; and

(ccc) "Appendix F to Part 60, Quality Assurance Procedures".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Weston Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) Copies of the C.F.R. are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at <http://bookstore.gpo.gov>.

(4) Copies of the C.F.R. and Federal Register are available electronically at <http://gpoaccess.gov/cfr/index.html>.]

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amendment will be held on June 25, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made

to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on July 2, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone 502 573-3382, fax 502 573-3787, and email: [gerry.ennis@ky.gov](mailto:gerry.ennis@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the New Source Performance Standards for new stationary sources, (Part 60 NSPS), Subparts A, D through XX, BBB through NNN, and PPP through KKKK, codified in the Code of Federal Regulations, 40 C.F.R. Part 60, which contains the NSPS source categories and standards for compliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of the Part 60 NSPS and to comply with the requirements in KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the federal Part 60 NSPS requirements shall comply with this administrative regulation.

(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 revises the text according to KRS Chapter 13A. requirements. It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: Recent amendments to KRS Chapter 13A.2261 require agencies to draft new language to existing administrative regulations that incorporate federal rules by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to implement and enforce the federal Part 60 NSPS rules and standards in order to retain these authorities from the U.S. EPA.

(d) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 60 requirements will continue to work with the state rather than the U.S. EPA for compliance demonstration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are major sources of air pollutants as defined in 40 C.F.R. Part 60 are subject to this regulation. The Division will remain as the enforcement agency for these standards.

(4) Provide an assessment 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: Sources subject to the Part 60 NSPS will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(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 shall comply with the federal Part 60 NSPS requirements and this 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 are already subject to the federal Part

60 NSPS. There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 60 NSPS will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used 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 is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 60 NSPS source categories.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. According to the delegation provisions under 42 U.S.C. 7411(c), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Part 60 NSPS for new stationary sources located within the Commonwealth.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7411 requires that the U.S. EPA promulgate New Source Performance Standards for new stationary sources. These NSPS standards and requirements for compliance are codified in 40 C.F.R. 60.1 through 60.19, 60.40 through 60.506, 60.540 through 60.668, and 60.680 through 60.4420.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. 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 Division for Air Quality will implement this program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.1-60.19, 60.40-60.506, 60.540-60.668, 60.680-60.4420, 42 U.S.C. 7411.

4. 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 generates no 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 regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

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

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

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

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(Amendment)

401 KAR 60:670. 40 C.F.R Part 60 standards of performance for nonmetallic mineral processing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60, 60.670-60.676, 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, 7602

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.670-60.676, 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, 7602

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. This administrative regulation establishes [incorporates by reference] the New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 through [te] 60.676, Subpart 000 [(Subpart 000)], and establishes alternate compliance standards for the control of particulate emissions from nonmetallic mineral processing plants. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7411(c)(1).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 60 NSPS" means the Standards of Performance for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 through 60.676, Subpart 000. [For purposes of 40 C.F.R. 60.670 to 60.676 (Subpart 000), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 60, "Part 60 NSPS" means the Standards of Performance for Nonmetallic Mineral Processing Plants, codified in 40 C.F.R. 60.670 to 60.676 (Subpart 000).]

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 60.670 through [te] 60.676, Subpart 000 [(Subpart 000)]. These sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 60.670 through [te] 60.676, Subpart 000 [(Subpart 000)], "Standards of Performance for Nonmetallic Mineral Processing Plants"; and

(2) The applicable test methods and requirements contained in Appendix A to Part 60, ~~incorporated by reference in 401 KAR 60:095~~, except as provided in Section 3 of this administrative regulation.

Section 3. Alternate Compliance Standards for Particulate Matter. (1) Subsection (2) of this section shall apply in lieu of 40 C.F.R. 60.672, Standard for particulate matter, if:

(a) An affected facility is enclosed in a building that cannot be safely entered; or

(b) Reference Method 9 cannot be applied using guidance specified by the U.S. EPA for an affected facility enclosed inside a building.

(2) The owner or operator of a facility specified in subsection (1) of this section shall comply with the following alternate compliance standards for particulate matter:

(a) For a building vent, the discharge of emissions into the atmosphere shall not exceed the stack emissions limits in 40 C.F.R. 60.672(a);

(b) For a building that does not enclose a crusher, the discharge of fugitive emissions into the atmosphere shall not exceed ten (10) percent opacity; and

(c) For a building that encloses a crusher, the discharge of fugitive emissions shall not exceed fifteen (15) percent opacity.

~~[Section 4. Incorporation by Reference. (1) 40 C.F.R. 60.670 to 60.676 (Subpart OOO), "Standards of Performance for Nonmetallic Mineral Processing Plants," as published July 1, 2003 is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;~~

~~(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;~~

~~(c) Bowling Green Regional Office, 1508 Westin Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;~~

~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;~~

~~(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;~~

~~(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2980;~~

~~(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and~~

~~(h) Paducah Regional Office, 130 Eagle Nest Drive Paducah, Kentucky 42003, (270) 898-8468.~~

~~(3) Copies of the C.F.R. are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at <http://bookstore.gpo.gov>.~~

~~(4) Copies of the C.F.R. are available electronically at <http://gpoaccess.gov/cfr/index.html>]~~

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amendment will be held on June 25, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on July 2, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and email [gerry.ennis@ky.gov](mailto:gerry.ennis@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the New Source Performance Standards for new nonmetallic mineral processing plants, (Part 60 NSPS), Subpart OOO, codified in the Code of Federal Regulations, 40 C.F.R. Part 60, which contains the NSPS source categories and standards for compliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of the Part 60 NSPS, Subpart OOO, and to comply with the requirements in KRS CHAPTER 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to Subpart OOO of the federal Part 60 NSPS requirements shall comply with this administrative regulation.

(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 revises the text according to KRS CHAPTER 13A. requirements. It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: Recent amendments to KRS CHAPTER 13A.2261 require agencies to draft new language to existing administrative regulations that incorporate federal rules by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to implement and enforce the federal Part 60 NSPS rules and standards in order to retain these authorities from the U.S. EPA.

(d) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 60, Subpart OOO requirements will continue to work with the state rather than the U.S. EPA for compliance demonstration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are major sources of air pollutants as defined in 40 C.F.R. Part 60, Subpart OOO, are subject to this regulation. The Division for Air Quality will remain as the enforcement agency for these standards.

(4) Provide an assessment 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: Sources subject to the Part 60 NSPS will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(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 shall comply with the federal Part 60 NSPS, Subpart OOO requirements and this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-



tion (3): Regulated entities are already subject to the federal Part 60 NSPS, Subpart OOO requirements. There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 60 NSPS, Subpart OOO, will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

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

(a) Initially: The Division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used 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 is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. However, this regulation does contain alternate standards for compliance demonstration of particulate matter standards when either a person cannot safely enter a building or Method 9 cannot be used for opacity testing.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. According to the delegation provisions under 42 U.S.C. 7411(c), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Part 60 NSPS, Subpart OOO, for stationary sources located within the Commonwealth.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7411 requires that the U.S. EPA promulgate New Source Performance Standards for new stationary sources. These NSPS standards are codified in 40 C.F.R. 60.670 through 60.676, Subpart OOO.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This regulation contains alternate compliance options with the particulate matter standard, codified in 40 C.F.R. 60.672, which have been approved by the U.S. EPA.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The alternate compliance standards will apply when a person cannot safely enter a building or when Method 9 cannot be used.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. 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 Division for Air Quality will implement this program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 60.670-60.676, 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, 7602.

4. 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 generates no 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 regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for the implementation of this program.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amendment)

#### 401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 63.1-63.56, 63.70-63.81, 63.100-63.11168 [63.100-63.9942], 42 U.S.C. 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 63.1-63.56, 63.70-63.81, 63.100-63.11168 [63.100-63.9942], 42 U.S.C. 7401, 7412, 7414, 7416, 7601

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. This administrative regulation establishes [~~incorporates by reference~~] the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 63.1 through [~~to~~] 63.56, 63.70 through [~~to~~] 63.81, and 63.100 through 63.11168 [63.100 to 63.9942]. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

Section 1. Definitions. (1) "Administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) "Part 63 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.11168, Subparts A, B, D, and F through GGGGGG.

[For purposes of 40 C.F.R. 63.1 to 63.56, 63.70 to 63.81, and 63.100 to 63.9942 (Subparts A, B, D, and F to TTTTT), "administrator" means the Secretary of the Environmental and Public Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

(2) For purposes of 40 C.F.R. Part 63, "Part 63 NESHAP" means the National Emission Standards for Hazardous Air Pollutants codified in 63.1 to 63.56, 63.70 to 63.81, and 63.100 to 63.9942 (Subparts A, B, D, and F to TTTTT).]



Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 C.F.R. 63.1 through [to] 63.56, 63.70 through [to] 63.81, and 63.100 through 63.11168, Subparts A, B, D, and F through GGGGGG [to 63.9942 (Subparts A, B, D, and F to TTTT)]. These sources shall comply with the following:

(1) The applicable provisions in 40 C.F.R. 63.1 through 63.16, Subpart A [to 63.15 (Subpart A)], "General Provisions";

(2) For sources for which a maximum achievable control technology (MACT) determination has not been made, the applicable methods and procedures in 40 C.F.R. 63.40 through [to] 63.56, Subpart B [(Subpart B)], "Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)";

(3) For sources that applied for early reduction credit and wish to extend the deadline for compliance demonstration, the applicable provisions in 40 C.F.R. 63.70 through [to] 63.81, Subpart D [(Subpart D)], "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants";

(4) The applicable test methods, procedures, and other provisions contained in 40 C.F.R. Part 63, Appendices A through E; and

(5) The applicable Part 63 NESHAP.

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

(a) 40 C.F.R. 63.1 to 63.15 (Subpart A), "General Provisions", published July 1, 2003, and as amended 68 Fed. Reg. 64446, November 13, 2003, 68 Fed. Reg. 70965, December 19, 2003, 69 Fed. Reg. 157, January 2, 2004, 69 Fed. Reg. 5063, February 3, 2004, 69 Fed. Reg. 20990, April 19, 2004, 69 Fed. Reg. 22623, April 26, 2004, 69 Fed. Reg. 33506, June 15, 2004;

(b) 40 C.F.R. 63.40 to 63.56 (Subpart B), "Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)"; as published July 1, 2003;

(c) 40 C.F.R. 63.70 to 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants", as published July 1, 2003;

(d) 40 C.F.R. 63.100 to 63.107 (Subpart F), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry", as published July 1, 2003;

(e) 40 C.F.R. 63.110 to 63.153 (Subpart G), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater", as published July 1, 2003;

(f) 40 C.F.R. 63.160 to 63.183 (Subpart H), "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks", as published July 1, 2003;

(g) 40 C.F.R. 63.190 to 63.193 (Subpart I), "National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks", as published July 1, 2003;

(h) 40 C.F.R. 63.210 to 63.217 (Subpart J), "National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production"; as published July 1, 2003;

(i) 40 C.F.R. 63.300 to 63.313 (Subpart L), "National Emission Standards for Coke Oven Batteries", as published July 1, 2003;

(j) 40 C.F.R. 63.320 to 63.326 (Subpart M), "National Perchloroethylene Air Emission Standards for Dry-Cleaning Facilities", as published July 1, 2003;

(k) 40 C.F.R. 63.340 to 63.348 (Subpart N), "National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks", as published July 1, 2003;

(l) 40 C.F.R. 63.360 to 63.368 (Subpart O), "Ethylene Oxide Emissions Standards for Sterilization Facilities", as published July 1, 2003;

(m) 40 C.F.R. 63.400 to 63.407 (Subpart Q), "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers", as published July 1, 2003;

(n) 40 C.F.R. 63.420 to 63.429 (Subpart R), "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Ter-

minals and Pipeline Breakout Stations)", published July 1, 2003, and as amended 68 Fed. Reg. 70965, December 19, 2003;

(o) 40 C.F.R. 63.440 to 63.458 (Subpart S), "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry", as published July 1, 2003;

(p) 40 C.F.R. 63.460 to 63.470 (Subpart T), "National Emission Standards for Halogenated Solvent Cleaning", as published July 1, 2003;

(q) 40 C.F.R. 63.480 to 63.507 (Subpart U), "National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins", as published July 1, 2003;

(r) 40 C.F.R. 63.520 to 63.529 (Subpart W), "National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Nonnylon Polyamides Production", as published July 1, 2003;

(s) 40 C.F.R. 63.541 to 63.551 (Subpart X), "National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting", as published July 1, 2003;

(t) 40 C.F.R. 63.560 to 63.568 (Subpart Y), "National Emission Standards for Marine Tank Vessel Loading Operations", as published July 1, 2003;

(u) 40 C.F.R. 63.600 to 63.611 (Subpart AA), "National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants", as published July 1, 2003;

(v) 40 C.F.R. 63.620 to 63.632 (Subpart BB), "National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants", as published July 1, 2003;

(w) 40 C.F.R. 63.640 to 63.655 (Subpart CC), "National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries", as published July 1, 2003;

(x) 40 C.F.R. 63.680 to 63.698 (Subpart DD), "National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations", as published July 1, 2003;

(y) 40 C.F.R. 63.701 to 63.708 (Subpart EE), "National Emission Standards for Magnetic Tape Manufacturing Operations", as published July 1, 2003;

(z) 40 C.F.R. 63.741 to 63.759 (Subpart GG), "National Emission Standards for Aerospace Manufacturing and Rework Facilities", as published July 1, 2003;

(aa) 40 C.F.R. 63.760 to 63.777 (Subpart HH), "National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities", as published July 1, 2003;

(bb) 40 C.F.R. 63.780 to 63.788 (Subpart II), "National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)", as published July 1, 2003;

(cc) 40 C.F.R. 63.800 to 63.808 (Subpart JJ), "National Emission Standards for Wood Furniture Manufacturing Operations", as published July 1, 2003;

(dd) 40 C.F.R. 63.820 to 63.831 (Subpart KK), "National Emission Standards for the Printing and Publishing Industry", as published July 1, 2003;

(ee) 40 C.F.R. 63.840 to 63.853 (Subpart LL), "National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants", as published July 1, 2003;

(ff) 40 C.F.R. 63.860 to 63.868 (Subpart MM), "National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills", published July 1, 2003, and as amended 68 Fed. Reg. 42605, July 18, 2003, 68 Fed. Reg. 67954, December 5, 2003, 69 Fed. Reg. 25323, May 6, 2004;

(gg) 40 C.F.R. 63.900 to 63.908 (Subpart OO), "National Emission Standards for Tanks - Level 1", as published July 1, 2003;

(hh) 40 C.F.R. 63.920 to 63.929 (Subpart PP), "National Emission Standards for Containers", as published July 1, 2003;

(ii) 40 C.F.R. 63.940 to 63.949 (Subpart QQ), "National Emission Standards for Surface Impoundments", as published July 1, 2003;

(jj) 40 C.F.R. 63.960 to 63.967 (Subpart RR), "National Emission Standards for Individual Drain Systems", as published July 1, 2003;

(kk) 40 C.F.R. 63.980 to 63.999 (Subpart SS), "National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process", as published July 1, 2003;

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(ll) 40 C.F.R. 63.1000 to 63.1018 (Subpart TT), "National Emission Standards for Equipment Leaks-Control Level 1", as published July 1, 2003;

(mm) 40 C.F.R. 63.1019 to 63.1039 (Subpart UU), "National Emission Standards for Equipment Leaks-Control Level 2 Standards", as published July 1, 2003;

(nn) 40 C.F.R. 63.1040 to 63.1050 (Subpart VV), "National Emission Standards for Oil-Water Separators and Organic-Water Separators", as published July 1, 2003;

(oo) 40 C.F.R. 63.1060 to 63.1067 (Subpart WW), "National Emission Standards for Storage Vessels (Tanks)—Control Level 2", as published July 1, 2003;

(pp) 40 C.F.R. 63.1080 to 63.1097 (Subpart XX), "National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations", as published July 1, 2003;

(qq) 40 C.F.R. 63.1100 to 63.1114 (Subpart YY), "National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards", as published July 1, 2003;

(rr) 40 C.F.R. 63.1155 to 63.1166 (Subpart CCC), "National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants", as published July 1, 2003;

(ss) 40 C.F.R. 63.1175 to 63.1196 (Subpart DDD), "National Emission Standards for Hazardous Air Pollutants for Mineral-Wool Production", as published July 1, 2003;

(tt) 40 C.F.R. 63.1200 to 63.1214 (Subpart EEE), "National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors", as published July 1, 2003;

(uu) 40 C.F.R. 63.1250 to 63.1261 (Subpart GGG), "National Emission Standards for Pharmaceuticals Production", as published July 1, 2003;

(vv) 40 C.F.R. 63.1270 to 63.1287 (Subpart HHH), "National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities", as published July 1, 2003;

(ww) 40 C.F.R. 63.1290 to 63.1309 (Subpart III), "National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production", as published July 1, 2003;

(xx) 40 C.F.R. 63.1310 to 63.1336 (Subpart JJJ), "National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins", published July 1, 2003, and as amended 69 Fed. Reg. 31008, June 2, 2004;

(yy) 40 C.F.R. 63.1340 to 63.1358 (Subpart LLL), "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry", as published July 1, 2003;

(zz) 40 C.F.R. 63.1360 to 63.1369 (Subpart MMM), "National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production", as published July 1, 2003;

(aaa) 40 C.F.R. 63.1380 to 63.1388 (Subpart NNN), "National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing", as published July 1, 2003;

(bbb) 40 C.F.R. 63.1400 to 63.1419 (Subpart OOO), "National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins", as published July 1, 2003;

(ccc) 40 C.F.R. 63.1420 to 63.1439 (Subpart PPP), "National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production", as published July 1, 2003;

(ddd) 40 C.F.R. 63.1440 to 63.1459 (Subpart QQQ), "National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting", as published July 1, 2003;

(eee) 40 C.F.R. 63.1500 to 63.1519 (Subpart RRR), "National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production", as published July 1, 2003;

(fff) 40 C.F.R. 63.1541 to 63.1550 (Subpart TTT), "National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting", as published July 1, 2003;

(ggg) 40 C.F.R. 63.1560 to 63.1579 (Subpart UUU), "National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units", as published July 1, 2003;

(hhh) 40 C.F.R. 63.1580 to 63.1595 (Subpart VVV), "National Emission Standards for Hazardous Air Pollutants: Publicly Owned

Treatment Works", as published July 1, 2003;

(iii) 40 C.F.R. 63.1650 to 63.1661 (Subpart XXX), "National Emission Standards for Hazardous Air Pollutants for Ferrous Alloys Production: Ferromanganese and Silicomanganese", as published July 1, 2003;

(jjj) 40 C.F.R. 63.1930 to 63.1990 (Subpart AAAA), "National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills", as published July 1, 2003;

(kkk) 40 C.F.R. 63.2130 to 63.2192 (Subpart CCCC), "National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast", as published July 1, 2003;

(lll) 40 C.F.R. 63.2330 to 63.2406 (Subpart EEEE), "National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)", as published 69 Fed. Reg. 5063, February 3, 2004;

(mmm) 40 C.F.R. 63.2430 to 63.2550 (Subpart FFFF), "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing", as published 68 Fed. Reg. 63888, November 10, 2003;

(nnn) 40 C.F.R. 63.2830 to 63.2872 (Subpart GGGG), "National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production", as published July 1, 2003;

(ooo) 40 C.F.R. 63.2980 to 63.3004 (Subpart HHHH), "National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production", as published July 1, 2003;

(ppp) 40 C.F.R. 63.3080 to 63.3176 (Subpart IIII), "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks", as published 69 Fed. Reg. 22623, April 26, 2004;

(qqq) 40 C.F.R. 63.3280 to 63.3420 (Subpart JJJJ), "National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating", as published July 1, 2003;

(rrr) 40 C.F.R. 63.3480 to 63.3561 (Subpart KKKK), "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans", as published 68 Fed. Reg. 64447, November 13, 2003;

(sss) 40 C.F.R. 63.3880 to 63.3981 (Subpart MMMM), "National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products", published 69 Fed. Reg. 157, January 2, 2004, and as amended 69 Fed. Reg. 22660, April 26, 2004;

(ttt) 40 C.F.R. 63.4080 to 63.4181 (Subpart NNNN), "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances", as published July 1, 2003;

(uuu) 40 C.F.R. 63.4280 to 63.4371 (Subpart OOOO), "National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles", as published July 1, 2003;

(vvv) 40 C.F.R. 63.4480 to 63.4581 (Subpart PPPP), "National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products", published 69 Fed. Reg. 20990, April 19, 2004, and as amended 69 Fed. Reg. 22660, April 26, 2004;

(www) 40 C.F.R. 63.4680 to 63.4781 (Subpart QQQQ), "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products", as published July 1, 2003;

(xxx) 40 C.F.R. 63.4880 to 63.4981 (Subpart RRRR), "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture", as published July 1, 2003;

(yyy) 40 C.F.R. 63.5080 to 63.5200 (Subpart SSSS), "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil", as published July 1, 2003;

(zzz) 40 C.F.R. 63.5280 to 63.5460 (Subpart TTTT), "National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations", as published July 1, 2003;

(aaaa) 40 C.F.R. 63.5480 to 63.5610 (Subpart UUUU), "National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing", as published July 1, 2003;

(bbbb) 40 C.F.R. 63.5680 to 63.5779 (Subpart VVVV), "National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing", as published July 1, 2003;

(cccc) 40 C.F.R. 63.5780 to 63.5935 (Subpart WWWW), "National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production", as published July 1, 2003;

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(dddd) 40 C.F.R. 63.5980 to 63.6015 (Subpart XXXX), "National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing", as published July 1, 2003;

(eeee) 40 C.F.R. 63.6080 to 63.6175 (Subpart YYYY), "National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines", as published 69 Fed. Reg. 10537, March 5, 2004;

(ffff) 40 C.F.R. 63.6580 to 63.6675 (Subpart ZZZZ), "National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines", as published 69 Fed. Reg. 33506, June 15, 2004;

(gggg) 40 C.F.R. 63.7080 to 63.7143 (Subpart AAAAA), "National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants", as published 69 Fed. Reg. 416, January 5, 2004;

(hhhh) 40 C.F.R. 63.7180 to 63.7195 (Subpart BBBB), "National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing", as published July 1, 2003;

(iiii) 40 C.F.R. 63.7280 to 63.7352 (Subpart CCCC), "National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks", as published July 1, 2003;

(jjjj) 40 C.F.R. 63.7680 to 63.7765 (Subpart EEEEE), "National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries", as published 69 Fed. Reg. 21923, April 22, 2004;

(kkkk) 40 C.F.R. 63.7780 to 63.7852 (Subpart FFFFF), "National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities", as published July 1, 2003;

(llll) 40 C.F.R. 63.7880 to 63.7957 (Subpart GGGG), "National Emission Standards for Hazardous Air Pollutants: Site Remediation", as published 68 Fed. Reg. 58190, October 8, 2003;

(mmmm) 40 C.F.R. 63.7980 to 63.8105 (Subpart HHHHH), "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing", published 68 Fed. Reg. 69185, December 11, 2003, and as amended 68 Fed. Reg. 75033, December 29, 2003;

(nnnn) 40 C.F.R. 63.8180 to 63.8266 (Subpart IIIII), "National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants", as published 68 Fed. Reg. 70928, December 19, 2003;

(oooo) 40 C.F.R. 63.8380 to 63.8515 (Subpart JJJJJ), "National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing", as published July 1, 2003;

(pppp) 40 C.F.R. 63.8530 to 63.8665 (Subpart KKKKK), "National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing", as published July 1, 2003;

(qqqq) 40 C.F.R. 63.8680 to 63.8698 (Subpart LLLLL), "National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing", as published July 1, 2003;

(rrrr) 40 C.F.R. 63.8780 to 63.8830 (Subpart MMMMM), "National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabricating Operations", as published July 1, 2003;

(ssss) 40 C.F.R. 63.8980 to 63.9075 (Subpart NNNNN), "National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production", as published July 1, 2003;

(tttt) 40 C.F.R. 63.9280 to 63.9375 (Subpart PTTTT), "National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands", published July 1, 2003, and as amended 68 Fed. Reg. 51830, August 28, 2003;

(uuuu) 40 C.F.R. 63.9480 to 63.9570 (Subpart QQQQQ), "National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities", as published July 1, 2003;

(vvvv) 40 C.F.R. 63.9580 to 63.9652 (Subpart RRRRR), "National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing", as published 68 Fed. Reg. 61898, October 30, 2003;

(wwww) 40 C.F.R. 63.9780 to 63.9824 (Subpart SSSSS), "National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing", as published July 1, 2003;

(xxxx) 40 C.F.R. 63.9880 to 63.9942 (Subpart TTTTT), "Na-

tional Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining", as published 68 Fed. Reg. 58620, October 10, 2003;

(yyyy) "Appendix A to Part 63-Test Methods", as published July 1, 2003;

(zzzz) "Appendix B to Part 63-Sources Defined for Early Reduction Provisions", as published July 1, 2003;

(aaaa) "Appendix C to Part 63-Determination of the Fraction Biodegraded (Fbio) in a Biological Treatment Unit", as published July 1, 2003;

(bbbb) "Appendix D to Part 63-Alternative Validation Procedure for EPA Waste and Wastewater Methods", as published July 1, 2003; and

(cccc) "Appendix E to Part 63-Monitoring Procedure for Non-thoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions", as published July 1, 2003.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) Copies of the C.F.R. and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, telephone number (866) 512-1800, facsimile number (202) 512-2250, and the Internet at <http://bookstore.gpo.gov>.

(4) Copies of the C.F.R. and Federal Register are available electronically at <http://gpoaccess.gov/cfr/index.html>.

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amendment will be held on June 25, 2007, at 10 a.m. (local time) in the conference room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on July 2, 2007. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Gerry Ennis, Environmental Technology III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and email [gerry.ennis@ky.gov](mailto:gerry.ennis@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerry Ennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the National Emission Standards for Hazardous Air Pollutants (Part 63 NESHAP), Subparts A, B, D and F through GGGGGG, codified in the Code of Federal Regulations, 40 C.F.R. Part 63, which contains the NESHAP source categories and standards for compliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of the Part 63 NESHAP and to comply with the requirements in KRS CHAPTER 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The cabinet complies with this mandate by implementing and enforcing the standards and requirements contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the federal Part 63 NESHAP requirements shall comply with this administrative regulation.

(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 revises the text according to KRS CHAPTER 13A. requirements. It does not change the intent of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: Recent amendments to KRS CHAPTER 13A.2261 require agencies to draft new language to existing administrative regulations that incorporate federal rules by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to implement and enforce the federal Part 63 NESHAP rules and standards in order to retain these authorities from the U.S. EPA.

(d) How the amendment will assist in the effective administration of statutes: Sources subject to the 40 C.F.R. Part 63 requirements will continue to work with the state rather than the U.S. EPA for compliance demonstration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Facilities that are major sources of hazardous air pollutants as defined in 40 C.F.R. Part 63 are subject to this regulation. The Division for Air Quality will remain as the enforcement agency for these standards.

(4) Provide an assessment 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: Sources subject to the Part 63 NESHAP will continue to work with the Commonwealth rather than the federal government. This amendment will create financial savings because the Division will no longer be required to revise this regulation when amendments are promulgated by the U.S. EPA.

(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 shall comply with the federal Part 63 NESHAP requirements and this 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 are already subject to the federal Part 63 NESHAP. There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources subject to the Part 63 NESHAP will continue to work with the Commonwealth rather than the federal government. The administration agency will no longer have to amend this regulation on a routine basis in order to continue with delegation of authority.

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

(a) Initially: The division will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division's current operating budget will be used 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 is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Applicability and compliance requirements are not tiered beyond the federal Part 63 NESHAP source categories.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. According to the delegation provisions under 42 U.S.C. 7412(l), the U.S. EPA Administrator has delegated to the Commonwealth the authority to implement and enforce the provisions, standards, and requirements for demonstrating compliance with the Part 63 NESHAP for stationary sources located within the Commonwealth.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7412 requires that the U.S. EPA promulgate National Emission Standards for Hazardous Air Pollutants. These NESHAP standards and requirements for compliance are codified in 40 C.F.R. 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.11168.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. 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 Division for Air Quality will implement this program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 63.1-63.56, 63.70-63.81, 63.100-63.11168, 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

4. 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 generates no 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 regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's existing operating budget continues as the source of funding for implementation of this program.

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

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quent years? There will be no additional costs for administering the program in subsequent years.

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

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

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

**501 KAR 6:020. Corrections policies and procedures.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures, May 14[~~January 9~~], 2007" are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 8/9/05)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 8/9/05)
- 2.1 Inmate Canteen (Amended 2/15/06)
- 2.2 Warden's Fund (Amended 10/14/05)
- 3.1 Code of Ethics (Amended 5/14/07[~~8/9/05~~])
- 3.3 Holding of Second Jobs by Corrections' Employees (Amended 5/14/07[~~8/9/05~~])
- 3.5 Sexual Harassment and Anti-Harassment (Amended 8/9/05)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 11/9/04)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 5/14/07[~~8/9/05~~])
- 3.17 Uniformed Employee Dress Code (Amended 4/10/06)
- 3.20 Communication and Recording Devices (Amended 6/3/05)
- 5.1 Research and Survey Projects (Amended 8/9/05)
- 6.1 Open Records Law (Amended 5/14/07[~~8/9/05~~])
- 8.2 Fire Safety (Amended 2/15/06)
- 8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 11/9/04)
- 9.5 Execution (Amended 9/20/05)
- 9.6 Contraband (Amended 12/13/05)
- 9.8 Search Policy (Amended 1/9/07)
- 9.13 Transport to Court - Civil Action (Added 5/14/07)
- 9.18 Informants (Amended 10/14/05)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 9.20 Electronic Detection Equipment (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 11/15/06)
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Nutritional Adequacy of Inmate Diet (Amended 8/9/05)
- 11.4 Alternative Dietary Patterns (Amended 6/3/05)
- 13.1 Pharmacy Policy and Formulary (Amended 11/15/06)
- 13.2 Health Maintenance Services (Amended 1/9/07)
- 13.3 Medical Alert System (Amended 10/14/05)
- 13.5 Advance Healthcare Directives (Added 4/12/05)
- 13.6 Sex Offender Treatment Program (Amended 8/9/05)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)

- 13.8 Substance Abuse Treatment Program (Amended 5/14/07[~~Effective 12/17/98~~])
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 12/13/05)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 10/14/05)
- 14.3 Marriage of Inmates (Amended 10/14/05)
- 14.4 Legal Services Program (Amended 5/14/07[~~2/13/04~~])
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 5/14/07[~~1/9/07~~])
- 14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06)
- 15.1 Hair, Grooming and ID Card Standards (Amended 12/13/05)
- 15.2 Rule Violations and Penalties (Amended 11/15/06)
- 15.3 Meritorious Good Time (Amended 12/13/05)
- 15.5 Restoration of Forfeited Good Time (Amended 5/14/07[~~10/14/05~~])
- 15.6 Adjustment Procedures and Programs (Amended 10/14/05)
- 15.7 Inmate Account Restriction (Amended 11/15/06)
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 5/14/07[~~10/14/05~~])
- 16.2 Inmate Correspondence (Amended 11/15/06)
- 16.3 Inmate Access to Telephones (Amended 6/3/05)
- 16.4 Inmate Packages (Amended 5/14/07[~~11/15/06~~])
- 17.1 Inmate Personal Property (Amended 5/14/07[~~11/15/06~~])
- 17.2 Assessment Center Operations (Amended 11/15/06)
- 17.3 Controlled Intake of Inmates (Amended 1/12/05)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
- 18.1 Classification of the Inmate (Amended 5/14/07[~~10/14/05~~])
- 18.2 Central Office Classification Committee (Amended 10/14/05)
- 18.5 Custody and Security Guidelines (Amended 5/14/07[~~10/14/05~~])
- 18.7 Transfers (Amended 5/14/07[~~10/14/05~~])
- 18.9 Out-of-state Transfers (Amended 2/15/06)
- 18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 5/14/07[~~Effective 8/15/04~~])
- 18.15 Protective Custody (Amended 11/15/06)
- 18.16 Information to the Parole Board (Effective 11/15/06)
- 18.17 Interstate Agreement on Detainers (Amended 5/14/07[~~Effective 2/17/95~~])
- 18.18 International Transfer of Inmates (Amended 5/14/07[~~Effective 8/15/04~~])
- 19.1 Governmental Services Program (Amended 5/14/07[~~11/15/06~~])
- 19.2 Sentence Credit for Work (Added 2/13/04)
- 19.3 Inmate Wage/Time Credit Program (Amended 10/14/05)
- 20.1 Educational Programs and Educational Good Time (Amended 4/10/06)
- 22.1 Privilege Trips (Amended 10/14/05)
- 23.1 Religious Programs (Amended 1/9/07)
- 25.1 [~~Gratuities (Effective 7/29/92)~~]
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Institutional Inmate Furloughs (Amended 5/14/07[~~10/14/05~~])
- 25.6 Community Center Program (Amended 5/14/07[~~Effective 11/15/06~~])
- 25.8 Extended Furlough (Amended 4/12/05)
- 25.10 Administrative Release of Inmates (Amended 10/14/05)
- 25.11 Victim Notification (Amended 10/14/05)
- 26.1 Citizen Involvement and Volunteer Service Program (Added 9/15/04)

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## VOLUME 33, NUMBER 12 – JUNE 1, 2007

Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686 [Department of Correction, Office of Legal Services, 275 E. Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494], Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007, at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on June 21, 2007 at 10:30 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business July 2, 2007 to: Karen S. Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers (502) 564-2220

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky Department of Corrections into compliance with ACA Standards and updates current practices for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,825 employees and 19,501 inmates, and all visitors to

state correctional institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institutions.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(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 Sections 2 and 3 of the Kentucky Constitution.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections and each state correctional institution.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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 amendments to this regulation do not create any revenue for the Kentucky Department of Corrections, state correctional institutions, or other government entity.

(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 amendments to this regulation do not create any revenue for the Kentucky Department of Corrections, state correctional institutions, or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky Department of Corrections and



state correctional institutions operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

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

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

**501 KAR 6:030. Kentucky State Reformatory.**

RELATES TO: KRS Chapters 196, 197, 439  
 STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Reformatory.

Section 1. Incorporation by Reference. (1) Kentucky State Reformatory policies and procedures May 4, 2007 [December 13, 2005], are incorporated by reference. Kentucky State Reformatory policies and procedures include:

- ~~[KSR 01-00-09 Public Information and News Media Relations (Amended 10/14/05)]~~
- ~~KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution (Amended 10/14/05)]~~
- KSR 02-00-01 Inmate Canteen (Amended 05/04/07 [10/14/05])
- KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts (Amended 05/04/07 [10/14/05])
- KSR 02-00-11 Inmate Personal Accounts (Amended 05/04/07 [10/14/05])
- ~~[KSR 02-00-12 Institutional Funds and Issuance of Checks (Amended 10/14/05)]~~
- ~~KSR 05-00-03 Management Information Systems (Amended 10/14/05)]~~
- KSR 06-00-03 Kentucky Open Records Law and Release of Institutional and Medical Information (Amended 05/04/07 [12/13/05])
- KSR 08-00-08 Death of an Inmate and Notification of Inmate Family About Critical Medical Emergency (Amended 05/04/07 10/14/05)
- KSR 09-00-28 Restricted Areas (Amended 05/04/07 10/14/05)
- KSR 09-00-30 Parole Board (Amended 05/04/07)
- ~~[KSR 10-00-10 Special Management - Inmate Legal Access]~~
- KSR 10-01-02 Segregation - General Operational Procedures (Amended 05/04/07)
- KSR 10-01-03 Special Management Unit - Inmate Tracking System and Records System (Amended 05/04/07)
- ~~[KSR 10-01-04 Special Management - Administrative Segregation]~~
- ~~KSR 10-01-05 Special Management - Disciplinary Segregation~~
- ~~KSR 10-01-06 Special Management - Protective Custody~~
- ~~KSR 10-01-08 Special Management - Safekeepers and Pretrial Contract Hold Status Inmates]~~
- KSR 10-01-09 Special Management - Hold Ticket Inmates

- ~~[KSR 10-01-13 Special Management - Property Room Access~~
- ~~KSR 10-02-07 Correctional Psychiatric Treatment Unit: Inmate Tracking System and Record System]~~
- KSR 10-02-08 Correctional Psychiatric Treatment Unit (Amended 05/04/07)
- KSR 11-00-01 Meal Planning and Procedure (Amended 05/04/07 [10/14/05])
- ~~[KSR 11-00-04 Dining Room Rules and Dress Code for Inmates (Amended 10/14/05)]~~
- KSR 11-00-05 Food Service Department Clothing Issuance, Laundry and Sanitation (Amended 05/04/07 [12/13/05])
- KSR 11-00-06 Health Standards and Regulations for Food Service Employees (Amended 05/04/07 [10/14/05])
- KSR 12-00-03 State Items Issued to Inmates (Amended 05/04/07)
- ~~[KSR 12-00-05 Sanitation Policy and Standards]~~
- KSR 12-00-07 Regulations for Inmate Barbershop (Amended 05/04/07)
- KSR 12-00-09 Treatment of Inmates with Body Lice (Amended 05/04/07)
- KSR 13-00-03 Medication for Inmates Leaving Institution Grounds (Amended 10/14/05)
- KSR 13-00-04 Medical and Dental Care (Amended 10/14/05)
- KSR 13-00-05 Medical Records (Amended 12/13/05 10/14/05)
- KSR 13-00-08 Institutional Specimen Processing Center (Amended 10/14/05)
- KSR 13-00-09 Institutional Pharmacy Procedures (Amended 10/14/05)
- KSR 13-00-10 Requirements for Medical Personnel (Amended 10/14/05)
- KSR 13-00-11 Health Evaluation (Amended 10/14/05)
- KSR 13-00-12 Vision Care and Ophthalmology Services (Amended 10/14/05)
- KSR 13-00-14 Periodic Health Examinations for Inmates (Amended 10/14/05)
- KSR 13-00-15 Medical Alert System (Amended 10/14/05)
- KSR 13-00-17 Special Care (Amended 10/14/05)
- KSR 13-02-01 Mental Health Services (Amended 10/14/05)
- KSR 13-02-02 Mentally Retarded Inmates (Amended 10/14/05)
- KSR 13-02-03 Suicide Prevention and Intervention Program (Amended 10/14/05)
- KSR 13-02-08 Offender Observer Program (Amended 12/13/05)
- KSR 14-00-01 Inmate Rights
- KSR 14-00-02 Americans with Disabilities Act Inmate Program Access
- KSR 15-00-02 Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
- KSR 15-00-06 Inmate I.D. Cards
- KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures
- KSR 15-00-08 Firehouse Living Area
- KSR 15-00-09 Use of Tobacco Products for Inmates and Staff
- KSR 15-00-10 Program Services for Special Housing Placement
- KSR 15-01-01 Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
- KSR 15-01-02 Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
- KSR 15-01-03 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
- KSR 15-01-04 Operational Procedures and Rules and Regulations for Unit A, B & C: Institutional Medical and Fire Safety Service: Unit Application
- KSR 15-01-05 Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
- KSR 15-01-06 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
- KSR 16-00-02 Inmate Correspondence and Mailroom Operations



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KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-03	Night Visit Regulations
KSR 17-00-05	Assessment and Orientation, Consent Decree Notification to Inmates
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Intracommunity Transfers, Identification Department, Department - Admission and Discharge
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job (OJT) Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Unassigned Status/Placement (Amended 10/14/05)
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 20-00-06	English as a Second Language
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Special Management Unit (SMU)
KSR 21-00-05	Library Services for Correctional Psychiatric Treatment Unit
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 22-00-08	Privilege Trips
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 24-00-02	Substance Abuse and Chemical Dependency Program
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 26-00-01	Volunteer Services Program

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JOHN D. REES, Commissioner

APPROVED BY AGENCY: May 4, 2007

FILED WITH LRC: May 4, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 21, 2007 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business July 2, 2007 to:

CONTACT PERSON: Karen S. Howard, Justice and Public

Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2<sup>nd</sup> Floor, Frankfort, Kentucky 40601, phone 502 564-8215, fax 502 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers (502) 564-2220

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky State Reformatory including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky State Reformatory.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky State Reformatory into compliance with ACA Standards and updates current practices for the facility.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky State Reformatory.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky State Reformatory 538 employees and 1,926 inmates, and all visitors to KSR.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Kentucky State Reformatory will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institution.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Kentucky State Reformatory budgeted funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: No

(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. Separate 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 Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky State Reformatory.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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 amendments to this regulation do not create any revenue for the Kentucky State Reformatory, or other government entity.

(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 amendments to this regulation do not create any revenue for the Kentucky State Reformatory or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky State Reformatory operates, but do not increase costs from what was previously budgeted to the Kentucky State Reformatory.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky State Reformatory operates, but are not expected to increase costs from what will be budgeted to the Kentucky State Reformatory.

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

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

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439  
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky Correctional Institution for Women.

Section 1. Incorporation by Reference. (1) Kentucky Correctional Institution for Women Policies and Procedures, May 14, 2007~~(October 14, 2005)~~ are incorporated by reference. Kentucky Correctional Institution for Women Policies and Procedures include:

- KCIW 01-03-01 Communications Between Staff and Inmates (Amended 6/10/03)
- KCIW 01-04-02 Annual Report (Added 3/13/03)
- KCIW 01-05-01 Staff Meeting and Reporting Schedules (Added 3/13/03)
- KCIW 01-08-01 News Media Access (Totally Revised 3/13/03)
- KCIW 01-08-02 Institutional Tours (Amended 6/10/03)
- KCIW 01-09-01 Cooperation with Outside Agencies (Added 3/13/03)
- KCIW 01-10-01 Services From Outside Agencies (Added 3/13/03)
- KCIW 01-11-01 Annual Planning Document (Amended 6/10/03)
- KCIW 02-01-01 Comprehensive Insurance Coverage (Amended 6/10/03)
- KCIW 02-02-01 Fiscal Management: Audits (Totally Revised 3/13/03)
- KCIW 02-02-02 Fiscal Management: Budgets (Added 3/13/03)
- KCIW 02-02-04 Institution Purchasing Procedures (Totally Revised 3/13/03)
- KCIW 02-03-01 Nonexpendable Personal Property (Amended 6/10/03)
- KCIW 02-03-02 Inventory and Control of Stores (Totally Revised 3/13/03)
- KCIW 02-04-01 Accounting Procedures (Totally Revised 3/13/03)
- KCIW 02-05-01 Inmate Canteen and Staff Canteen (Totally Revised 3/13/03)
- KCIW 02-06-01 Interest Bearing Account (Amended 6/10/03)
- KCIW 03-01-01 Expense reimbursement (Amended 6/10/03)
- KCIW 03-02-01 General Guidelines for Staff (Amended 6/10/03)
- KCIW 03-02-02 Inclement Weather and Emergency Conditions (Amended 6/10/03)
- KCIW 03-03-01 Employee Grievance Procedure (Amended 3/13/03)
- KCIW 03-05-01 Employee Personnel File (Amended 3/13/03)
- KCIW 03-09-01 Payroll Personnel Manning (Amended 3/13/03)
- KCIW 03-10-01 Selection, Promotion and Lateral Entries (Amended 6/10/03)
- KCIW 03-11-01 Merit Registers (Amended 3/13/03)
- KCIW 03-13-01 Kentucky Employee Assistance Program (KEAP) (Amended 3/13/03)
- KCIW 04-01-01 Advisory Training Committee (Added 3/13/03)
- KCIW 04-02-01 Employee Training Requirements (Amended 6/10/03)
- KCIW 05-01-01 Research and Evaluation (Amended 6/10/03)
- KCIW 05-02-01 Management Information System (Amended 6/10/03)
- KCIW 05-03-01 Outside Consultation, Research, and Student Interns (Amended 6/10/03)
- KCIW 06-01-01 Inmate Records (Totally Revised 3/13/03)
- KCIW 06-01-02 Transfers (Amended 6/10/03)
- KCIW 06-01-03 Storage of Expunged Records (Totally Revised 3/13/03)
- KCIW 07-01-01 Preventive Maintenance Plan (Added 3/13/03)
- KCIW 07-03-01 Wastewater Treatment Plant: Operations (Added 3/13/03)
- KCIW 08-02-01 Fire Safety Practices (Added 3/13/03)
- KCIW 08-02-02 Fire Evacuation Routes (Added 3/13/03)
- KCIW 08-03-01 Hazardous Communication Program (Added 3/13/03)
- KCIW 09-01-02 Inmate Move Sheet (Added 3/13/03)
- KCIW 09-06-04 Regulation of Inmate Movement (Added 3/13/03)
- KCIW 09-07-02 Supervisory Staff Daily Inspections and Logs (Added 3/13/03)
- KCIW 09-08-01 Tours of Living and Activity Areas (Added 3/13/03)
- KCIW 09-10-02 Inmate Entry and Exit Procedure (Added 3/13/03)
- KCIW 09-11-01 Prohibiting Inmate Authority Over Other Inmates

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(Added 3/13/03)  
 KCIW 09-12-01 Search Plan (Added 3/13/03)  
KCIW 09-13-01 Tobacco Free Environment (Added 5/14/07)  
 KCIW 09-13-02 Alcohol Detection (Added 3/13/03)  
 KCIW 10-01-01 Special Management Unit General Operations and Regulations (Amended 6/10/03)  
 KCIW 10-01-02 Special Management Unit Programs, Placement and Review (Amended 6/10/03)  
 KCIW 10-01-04 Special Security (Totally Revised 3/13/03)  
 KCIW 11-01-01 Food Service Operation Inspections (Totally Revised 3/13/03)  
 KCIW 11-01-02 Budgeting, Accounting, and Purchasing for Food Service (Totally Revised 3/13/03)  
 KCIW 11-02-01 Menu Preparation and Special Diets (Totally Revised 3/13/03)  
 KCIW 11-03-01 General Guidelines for Food Service Operations (Amended 6/10/03)  
 KCIW 11-04-01 Health Regulations and General Guidelines for the Food Service Area (Totally Revised 3/13/03)  
 KCIW 11-05-01 Knife Control and Daily Inventory (Added 3/13/03)  
 KCIW 11-07-01 Special Religious Diets (Totally Revised 3/13/03)  
 KCIW 12-01-01 Laundry, Clothing, and Personal Hygiene (Added 3/13/03)  
 KCIW 12-02-01 Pest Control (Added 3/13/03)  
 KCIW 12-03-01 Water Supply and Waste Disposal (Added 3/13/03)  
 KCIW 12-04-04 Sanitation Plan (Added 3/13/03)  
 KCIW 13-01-01 Provision of Medical and Dental Care (Amended 10/11/05)  
 KCIW 13-01-02 Health Appraisal and Periodic Exams (Amended 10/11/05)  
 KCIW 13-01-03 Pharmaceutical Services (Amended 10/11/05)  
 KCIW 13-02-01 Family Notification (Amended 10/11/05)  
 KCIW 13-03-01 Emergency Care (Amended 10/11/05)  
 KCIW 13-03-02 Convalescent and Chronic Care (Amended 10/11/05)  
 KCIW 13-04-02 Psychiatric and Psychological Services (Amended 10/11/05)  
 KCIW 13-07-01 Detoxification and Alcohol or Chemical Dependency (Amended 10/11/05)  
 KCIW 13-09-01 Suicide Prevention and Intervention Program (Amended 10/11/05)  
 KCIW 13-13-01 Healthcare Records (Amended 10/11/05)  
 KCIW 13-14-01 Health Services (Amended 10/11/05)  
 KCIW 14-01-02 Inmate Rights (Totally Revised 3/13/03)  
 KCIW 14-02-01 Access to Legal Resources and Services (Totally Revised 3/13/03)  
 KCIW 14-04-01 Inmate Grievance Procedure (Totally Revised 3/13/03)  
 KCIW 15-06-01 Restriction Guidelines (Totally Revised 3/13/03)  
 KCIW 16-01-01 Inmate Correspondence (Amended 6/10/03)  
 KCIW 16-02-01 Inmate Access to Telephones (Totally Revised 3/13/03)  
 KCIW 16-03-01 Inmate Visiting Regulations (Totally Revised 3/13/03)  
 KCIW 16-03-02 Unauthorized Items (Totally Revised 3/13/03)  
 KCIW 16-04-01 Inmate Indigent and Low Income Fund (Totally Revised 3/13/03)  
 KCIW 16-05-01 Inmate Packages (Totally Revised 3/13/03)  
 KCIW 17-01-01 Assessment and Classification Center Programs (Totally Revised 3/13/03)  
 KCIW 17-02-01 Admission Procedure (Amended 6/10/03)  
 KCIW 17-05-01 Inmate Personal Property (Totally Revised 3/13/03)  
 KCIW 18-01-01 Inmate Classification (Added 3/13/03)  
 KCIW 18-01-03 Honor Program (Totally Revised 3/13/03)  
 KCIW 18-05-01 Special Needs Inmates (Totally Revised 3/13/03)  
 KCIW 19-01-01 Inmate Work and Program Assignments (Amended 6/10/03)  
 KCIW 19-02-01 Governmental Services (Added 3/13/03)  
 KCIW 19-03-01 Landscape and Maintenance Work Details (Totally Revised 3/13/03)  
 KCIW 19-04-01 Correctional Industries (Added 3/13/03)

KCIW 20-01-01 Education Programs (Totally Revised 3/13/03)  
 KCIW 21-01-01 Library Services (Added 3/13/03)  
 KCIW 21-02-01 Staff Library (Added 3/13/03)  
 KCIW 22-01-01 Recreation and Inmate Activity (Added 3/13/03)  
 KCIW 22-01-02 Arts and Crafts Program (Added 3/13/03)  
 KCIW 22-01-04 Inmate Club Activities (Totally Revised 3/13/03)  
 KCIW 23-01-01 Religious Services (Totally Revised 3/13/03)  
 KCIW 23-01-02 Institutional Prayer (Added 3/13/03)  
 KCIW 24-01-01 Social Services Program (Added 3/13/03)  
 KCIW 24-02-01 Substance Abuse Program (Added 3/13/03)  
 KCIW 25-02-01 Temporary Release and Community Release (Amended 6/10/03)  
 KCIW 25-02-02 Furloughs (Totally Revised 3/13/03)  
 KCIW 25-03-01 Funeral Home Visit or Bedside Visit (Amended 6/10/03)

KCIW 26-01-01 Volunteer Service Program (Amended 6/10/03)  
 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686 [Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400], Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007, at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 21, 2007 at 11 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business July 2, 2007 to: Karen S. Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers (502) 564-2220

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Correctional Institution for Women including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Correctional Institution for Women.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates and visitors concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky State Reformatory into compliance with ACA Standards and updates current practices

for the facility.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Correctional Institution for Women.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Correctional Institution for Women 220 employees and 738 inmates, and all visitors to KSR.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates and visitors will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Kentucky Correctional Institution for Women will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institution.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Correctional Institution for Women budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(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 Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Correctional Institution for Women.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first 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 amendments to this regulation do not create any revenue for the Kentucky Correctional Institution for Women, or other government entity.

(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 amendments to this regulation do not create any revenue for the Kentucky Correctional Institution for Women or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky Correctional Institution for Women operates, but do not increase costs from what was previously budgeted to the Kentucky Correctional Institution for Women.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Correctional Institution for Women operates, but are not expected to increase costs from what will be budgeted to the Kentucky Correctional Institution for Women.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 501 KAR 6:240. Home incarceration using an approved monitoring device.

RELATES TO: KRS Chapters 196, 197, 439, 532

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.346, 439.348, 439.470, 532.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, and 532.260 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations concerning the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole. The administrative regulation incorporates by reference the policies and procedures governing the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for home incarceration using an approved monitoring device," May 14, 2007, [~~October 10, 2006~~] are incorporated by reference. These policies and procedures include:

25.12 Home Incarceration and Monitoring of Inmates (Amended 5/14/07 [~~10/10/06~~])

27-15-02 Curfew and Monitoring (Amended 8/9/05)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686 [~~275 E. Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, (502) 564-4276, facsimile (502) 564-5037~~], Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007, at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 21, 2007 at 11:30 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd

Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business July 2, 2007 to: Karen S. Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers (502) 564-2220

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky Department of Corrections into compliance with current practices for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3825 employees and 19501 inmates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes in this amendment will not impact the current

budget.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institutions.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Budgeted Funds-Community Services & Local Facilities.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established due to the changes in this amendment.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. 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 Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections, each state correctional institution and probation and parole office.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (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 amendments to this regulation do not create any revenue for the Kentucky Department of Corrections, state correctional institutions, or other government entity.

(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 amendments to this regulation do not create any revenue for the Kentucky Department of Corrections, state correctional institutions, or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):  
Other Explanation:

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of State Police**  
**(Amendment)**

**502 KAR 20:020. Examiners.**

RELATES TO: KRS ~~329.010~~ -329.030, 42 U.S.C. 3796gg-8  
STATUTORY AUTHORITY: KRS 15A.160, 329.030  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 329.030(6) ~~require~~[provide that] the Secretary of the Justice and Public Safety Cabinet ~~to promulgate~~[may establish rules and] administrative regulations ~~establishing professional standards~~ for detection of deception examiners ~~[during their period of licensure to insure the examiner maintains adequate professional standards]~~. This administrative regulation establishes the practice requirements for detection of deception examiners.

Section 1. Definitions. (1) "Detection of deception examiner" is defined by KRS 329.010(1).

(2) "Secretary" is defined by KRS 329.010(5).

(3) "Sex crime" is defined by KRS 17.500(8).

(4) "Thorough investigation" means:

(a) Interviewing the victim, any witnesses, any potential witnesses, and the suspect if possible;

(b) Submitting any evidence to the laboratory if appropriate;  
and

(c) Pursuing any leads identified during the investigation.

Section 2. Advertising, soliciting and discrimination are prohibited as follows:

(1) An examiner shall not advertise in any manner which would tend to deceive or defraud the public.

(2) An examiner shall not publish or circulate any fraudulent, false, or misleading statements as to the skill or method of practice of any person or examiner.

(3) An examiner shall not claim superiority over other examiners as to [his] skill or method of practice.

(4) An examiner shall not divide fees, or agree to split or divide the fees received for detection of deception services with any person for bringing or referring a client.

(5) An examiner shall not attempt to solicit business as a result of information or statements obtained from an examinee relating to the examinee's[his] past employment or employer.

(6) An examiner shall not refuse to render detection of deception services to or for any person solely on account of the race, color, creed, sex, or national origin of the person.

Section 3.~~[2.]~~ (1) The examiner shall inform the prospective examinee that taking the detection of deception examination is a voluntary act and the examiner shall obtain the written consent of the examinee to undergo the examination.

(2) The examiner shall not conduct an examination on any person whom the examiner[he] believes, through observation or any other credible evidence, to be physically or psychologically unfit for the examination at that time.

(3) The examiner shall, immediately upon request of the examinee, terminate an examination in progress.

(4) The examiner shall not render a verbal or written opinion based on chart analysis, until the examinee has had a reasonable opportunity to explain any reactions to pertinent questions.

(5) The examiner shall not interrogate or conduct an examination of an examinee's sexual behavior, or ask any questions that can be construed as being sexually oriented or personally embarrassing to the examinee, regardless of marital status, unless the topic is a specific issue or unless it refers to the basic matter pertinent to the examination.

(6) The examiner shall not conduct an examination if the examiner[when he] has reason to believe the examination is intended to circumvent or defy the law.

(7) The examiner shall not knowingly issue, or permit an em-

ployee to issue, a polygraph examination report which is misleading, biased or falsified in any way. Each report shall be a factual, impartial and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.

(8) The examiner shall not conduct a polygraph examination without first reviewing the issues to be covered during the examination and the general content of the questions to be asked during the examination with the examinee.

(9)~~(a)~~ The examiner shall not render a conclusive verbal or written decision, based on chart analysis, as to the truthfulness or deception of the examinee without having administered three (3) or more polygraph charts using the same relevant test questions.

1. If after the examinee has submitted to one (1) chart, the examiner[he] refuses to submit to additional charts, the results shall be recorded as no opinion.

2. The fact of the examinee's refusal shall be noted in the verbal or written report of the examination.

~~(b) An examiner may terminate~~[This shall not preclude the examiner from terminating] an examination in progress at the examiner's[his own] discretion if, in the examiner's[when, in his] opinion, the examinee has become physically or psychologically unfit, or has become uncooperative to the point that it would be useless to continue the examination.

(10)~~(a)~~ All questions and answers asked during a polygraph examination shall be marked on the polygraph charts at the appropriate place on the chart where the question was asked and the answer given.

~~(b)~~ If a question sheet with numbered questions is used, the number of the asked question along with the answer given shall be noted and the question sheet shall be attached to the polygraph chart and made a part of the examinee's file.

~~(c)~~ Each polygraph chart shall be identified as to the person being examined, the examiner, time and date of the examination and the chart number.

(11)~~(a)~~ The examiner shall not, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion or which would infringe upon areas under the cognizance of professionals in those fields.

~~(b) The examiner may describe~~[This shall not preclude the examiner from describing] the appearance or behavior of the examinee, if:

1. The information[this] is pertinent to the examination; and  
2. as long as] The examiner refrains from offering any diagnosis which the examiner[he] is professionally unqualified to make.

(12)~~(a)~~ The examiner shall not offer testimony concerning the charts or conclusions presented by another examiner unless the examiner[he] is thoroughly familiar with the techniques and procedures used by the other examiner.

~~(b) An examiner may testify~~[This shall not prohibit an examiner from testifying] concerning the examiner's[his] independent examination of the same examinee.

(13) ~~An examiner shall~~[it shall be the duty of every examiner to] report to the cabinet any action or misconduct on the part of another examiner which would be in violation of the provisions of KRS Chapter 329 or 502 KAR Chapter 20~~[the administrative regulations promulgated thereof]~~.

Section 4.~~[3.]~~ Examinations of victims of sex crimes. (1) The victim of a sex crime has the right to refuse examination and shall be informed of this right. ~~[The victim's consent to the examination shall be in writing and received before the examination begins.]~~

(2) An examination shall not be requested, required, or conducted of a sex crime victim as a condition for proceeding with the investigation of the crime.~~[Examinations shall not be conducted of victims of sex crimes, as defined in KRS 17.500, to verify a crime has occurred.]~~

(3) Except as provided by subsection (4) of this section, examination[Examinations] of a sex crime victim shall not be conducted unless:

(a) The victim's consent to the examination is in writing and received by the examiner before the examination begins;

(b)1. The suspect has declined examination, has passed an examination or has been found unsuitable for an examination; or



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2. After a thorough investigation, the suspect cannot be identified or located;

~~(c)(b)~~ There is a clear issue to test on based on a thorough investigation ~~[testable dichotomy for polygraph testing];~~ and

~~(d)(e)~~ Before the examination, the investigating officer has provided the examiner with a signed, written document;

1. Describing any inconsistencies in the victim's allegation;

2. Stating if any inconsistency can be substantiated by existing physical or testimonial evidence;

~~3. [listing investigative strategies which have been used in the case, and]~~ Declaring that the victim has not been told that the investigation would cease if the victim refuses to consent to an examination; and

4. Containing no ~~[-~~This signed, written document shall not contain any] reference to whether the victim is or is not behaving like a typical sexual assault victim, as scientific evidence has shown that behaviors of individual sexual assault victims vary widely and therefore cannot be described as typical.

(4)(a) A sex crime victim may request examination. The investigator may arrange for the requested examination and the examination may be conducted if:

1. The request is voluntary and at the victim's own initiative;

2. It is documented in writing that the request is by the victim;

3. The written request is signed by the victim;

4. The written request is received by the examiner before the examination begins; and

5. The victim has an opportunity to consult with a victim's advocate prior to the examination.

(b) An examination shall not be considered at the victim's request if the victim agrees to the examination in response to a request by the investigator to take an examination.

(5) Every reasonable attempt shall be made to avoid visible and audio contact by the victim and suspect during the examination process. If contact is made, the examination shall be postponed and rescheduled for another date and time [The victim of a sex crime and the suspect shall not be tested in or be present in the same facility at the same time under any circumstance].

~~(6)(5)~~ The victim shall be advised that at the victim's request, a victim advocate shall be allowed to watch the examination from a two (2) way mirror or by closed circuit television in real time. The examiner and the victim shall be the only two (2) individuals inside the examination room during the entire examination process, except if a language interpreter is required.

~~(7)(6)~~ At the beginning of the examination, the examiner shall advise the victim that the examination is a stressful experience and that if the victim feels uncomfortable at any time with the polygraph process, it shall be terminated immediately.

~~(8)(7)~~ The victim shall not be interrogated under any circumstance. A post-examination debriefing shall be conducted to give the victim the opportunity to explain any unresolved responses on the examination. The victim shall be advised that upon the victim's request, a victim advocate shall be allowed to watch the debriefing session from a two (2) way mirror or closed circuit television.

~~(9)(8)~~ The testing format utilized shall be a researched comparison/control ~~[comparison and control]~~ question format (CQT). The relevant questions shall be answered with a "yes" answer.

~~(10)(9)~~ An irrelevant/relevant ~~[irrelevant and Relevant]~~ question format shall not be utilized on any sex crime victim ~~[of sexual assault]~~.

~~(11)(10)~~ Past sexual history of the victim shall not be explored by the examiner.

~~(12)(11)~~ Sex related comparison/control ~~[comparison and control]~~ questions shall not be asked of the victim. Lie comparison questions excluding sex shall be used on sex crime victims.

~~(13)(12)~~ At the end of the examination, the examiner shall advise the victim of the results.

~~(14)(13)~~ Quality control of the examination shall be conducted in writing and maintained with the polygraph file at least until after adjudication of the case.

~~(15)(14)~~ The entire examination shall be videotaped with adequate picture and sound from the time the victim walks into the testing room until the victim leaves the testing room for the last time. There shall not be a break in the videotaping of the process. The videotape shall be maintained as evidence until at least the

investigation is adjudicated.

Section 5.4- (1) The examiner shall maintain on file for at least two (2) years all records, papers, polygraph charts, consent to examination forms, notes, question lists or sheets, and reports of polygraph examinations that the examiner conducted ~~[by him]~~.

(2)(a) Except as provided in paragraph (b) of this subsection, an examiner who leaves the employment of another examiner, agency, firm, or company shall be allowed access, after showing reasonable cause, to the files of examinations that the examiner conducted ~~[by him]~~ during the two (2) year period prior to the date of the[his] request.

~~(b)[However,]~~ Without the approval of the employing examiner, agency, firm or company, the examiner shall not remove any of the material contained in the file or make notes of any of the information contained therein.

(3) The cabinet shall, ~~if[at any time]~~ there is just cause, inspect the records, reports, polygraph charts and all paperwork connected with an[the] examination to determine if an examiner is conducting examinations in accordance with the provisions of KRS Chapter 329 and 502 KAR Chapter 20 ~~[administrative regulations promulgated by the cabinet]~~.

Section 6.5- Continuing Education Requirements. (1) Each examiner shall complete ~~[provide proof of completion of]~~ at least twenty (20) hours of instruction in subject matter relating directly to the polygraph profession during the licensing year. Acceptable polygraph training for purposes of this requirement shall be:

(a) Polygraph seminars, courses, or other training sponsored by any national polygraph association, state polygraph association, or American Polygraph Association accredited polygraph school;

(b) Any training in polygraphy sponsored by a law enforcement training academy approved by the secretary ~~[of Justice]~~ or his designee ~~if[provided that]~~ the instructor is certified by the Kentucky Law Enforcement Council;

(c) Training received during the course of internship established ~~[stipulated]~~ in 502 KAR 20:030 and approved by the Secretary ~~[of Justice]~~ in writing; or

(d) Any training directly relating to polygraph subject material which has been preapproved by the secretary ~~[of Justice]~~ or his designee in writing.

(2) ~~[When]~~ Each examiner submitting ~~[submits]~~ a request to renew the examiner's ~~[his]~~ license for the following year shall also submit proof of completion of the required instruction such as: a copy of the diploma, certificate, or other documentation confirming instruction and attendance ~~[shall be submitted]~~.

BG NORMAN E. ARFLACK, Secretary  
JEFFREY T. MIDDENDORF, General Counsel  
APPROVED BY AGENCY: May 9, 2007  
FILED WITH LRC: May 14, 2007 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 22, 2007 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business July 2, 2007 to: Karen S. Howard, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8215, fax (502) 564-6686.



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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: 502 KAR 20:020 establishes the practice requirements for polygraph examiners.

(b) The necessity of this administrative regulation: To establish the practice requirements for polygraph examiners.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 329.030(6) requires the Secretary of the Justice and Public Safety Cabinet to promulgate regulations establishing professional standards for polygraph examiners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes professional standards for polygraph examiners including standards relating to advertising, the conduct of an examination, examinations of victims of sex crimes, and recordkeeping and inspection.

(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: (1) Prohibits examination of a sex crime victim as a condition for proceeding with the investigation of a crime; (2) Clarifies

the required procedures before an examination may be conducted on a victim of a sex crime; (3) Establishes required procedures if a victim of a sex crime requests to take a polygraph examination; and (4) Makes technical drafting and format corrections.

(b) The necessity of the amendment to this administrative regulation: For Kentucky to continue receiving federal grant money under the Violence Against Women Act (VAWA), 42 U.S.C. 3796gg-8 requires Kentucky to ensure that a victim of an alleged sex offense shall not be asked or required to submit to a polygraph examination "as a condition for proceeding with the investigation of such an offense." Currently, Kentucky receives approximately 1.75 million dollars in VAWA grant money. VAWA federal funds may be used to provide funding to state agencies and local units of government, private not-for-profit organizations, law enforcement, and prosecutors that provide victim services programs to adult female victims of domestic violence and sexual assault. Priority is given to victim advocacy services (30%), prosecution (25%), law enforcement (25%), courts (5%), and discretionary programs (15%). These funds may not be used for services to children unless they accompanied their mother during the crime. State agencies, local units of government and private not-for-profit organizations may apply for these funds. The 2007 VAWA awards are as follows:

AGENCY	PROGRAM	COUNTY	AWARD
Rowan Co. Fiscal Sheriff's Office	Domestic Violence Enforcement	Rowan	\$28,192.00
24th Judicial Circuit	Domestic Violence Advocacy Program	Martin, Lawrence	\$34,302.00
Sanctuary, Inc.	Outreach Counseling Project	Caldwell, Crittenden, Christian, Hopkins, Livingston, Lyon, Muhlenberg, Todd, Trigg	\$43,433.00
Jefferson County Attorney's Office	VAWA Investigator and Intake Center Grant	Jefferson	\$142,897.00
Women's Crisis Center, Inc.	Domestic Violence and Sexual Assault Services	Bracken, Fleming, Lewis, Mason, Robertson	\$76,065.00
Metro Louisville Police Department	Violence Against Women Project	Jefferson	\$141,310.00
Safe Harbor of Northeast Kentucky, Inc.	Continuum of Care	Boyd, Carter, Elliott, Greenup, Lawrence	\$27,745.00
Hope Harbor, Inc.	Rape Crisis Services	Allen, Barren, Butler, Edmonson, Hart, Logan, Metcalfe, Monroe, Simpson, Warren	\$46,964.00
City of Williamsburg	Victim Advocate Division	Whitley	\$58,032.00
The Center for Women and Families	Battered Immigrant & Refugee Victims' Legal Justice Project	Jefferson, Bullitt, Trimble, Spencer, Oldham, Shelby, Henry	\$43,995.00
Legal Aid of the Bluegrass	Domestic Violence Intervention and Advocacy Project	Anderson, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Estill, Fayette, Fleming, Franklin, Gallatin, Garrard, Grant, Greenup, Harrison, Jessamine, Kenton, Lawrence, Lewis, Lincoln, Madison, Mason, Menifee, Mercer	\$142,036.00
Jefferson County Sheriff's Office	VAWA Simultaneous Service of EPO & Warrant Grant	Jefferson	\$31,285.00
Clark County Attorney's Office	Domestic Violence Intake Center/Victim Advocacy Division	Clark	\$30,941.00
Office of the Attorney General	Violence Against Women Prosecution	All	\$65,346.00

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Office of the Fayette County Sheriff	Zero Tolerance: A Comprehensive Approach	Fayette	\$90,000.00
Appalachian Research and Defense Fund of Kentucky, Inc.	Domestic Violence Intervention and Advocacy Project	Adair, Bell, Breathitt, Casey, Clark, Clay, Clinton, Cumberland, Estill, Floyd, Garrard, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, McCreary, Madison, Magoffin	\$173,835.00
Kentucky Association of Sexual Assault Programs, Inc.	State Sexual Assault Coalition & Staffing	All	\$71,007.00
Kentucky Association of Sexual Assault Programs, Inc.	Statewide SANE/SART Coordination	All	\$79,350.00
Bourbon County Attorney's Office	PEACE	Bourbon	\$40,762.00
Chrysalis House, Inc.	Violence Against Women: A Pilot for Substance Abusing Women	All	\$39,200.00
SpringHaven, Inc. Domestic Violence Program	Family Advocate	Hardin, Meade, Grayson, LaRue, Breckinridge, Washington, Marion, Nelson	\$27,205.00
Barren River Area Safe Space, Inc.	Domestic Violence Assistance Project	Allen, Barren, Butler, Edmonson, Hart, Logan, Metcalfe, Monroe, Simpson, Warren	\$33,393.00
McCracken County Attorney's Office	Domestic Violence Prosecution	McCracken	\$42,751.00
Nicholas County Attorney's Office	Victim's Assistance Program	Nicholas, Harrison, Pendleton, Robertson	\$36,894.00
Garrard County Attorney's Office	Victim Rights Advocate	Garrard	\$35,151.00
Fleming County Fiscal Court	Fleming County Domestic Violence Unit	Fleming	\$38,569.00
Lexington-Fayette Urban County Government	Lexington SANE Project	Fayette and Surrounding	\$55,000.00
Kentucky Domestic Violence Association	Project Protect	All	\$82,961.00
Cabinet for Health & Family Services	CHFS-DCADVS VAWA Attorney	All	\$50,000.00
Brenda D. Cowan Coalition for Kentucky, Inc.	The Brenda Cowan Legal Assistance Project	Anderson, Boyle, Franklin, Garrard, Lincoln, Mercer	\$31,353.00
Kenton County Attorney's Office	Prosecution and Advocacy - Teaming Up Against Domestic Violence	Kenton	\$57,871.00

(c) How the amendment conforms to the content of the authorizing statutes: KRS 329.030(6) requires the Secretary of the Justice and Public Safety Cabinet to promulgate regulations establishing professional standards for polygraph examiners.

(d) How the amendment will assist in the effective administration of the statutes: Establishes professional standards for polygraph examiners including standards relating to examinations of victims of sex crimes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Polygraph examiners and examinees in Kentucky. There are 45 examiners currently in Kentucky. The KSP examiners conduct about 700 – 800 tests a year statewide.

(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: Polygraph examiners will have to follow additional procedural safeguards when examining victims of sex crimes. Victims of sex crimes will have to follow additional procedural safeguards when requesting examination.

(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): Additional procedural safeguards will be in place to protect victims of sex crimes.

(5) Provide an estimate of how much it will cost the administrative

tive body to implement this administrative regulation:

- (a) Initially: Nothing.
- (b) On a continuing basis: Nothing.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding 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: No additional funding necessary.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None
- (9) TIERING: Is tiering applied? No, all polygraph examiners are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
  2. 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? Polygraph Unit, Kentucky State Police; polygraph units, local police departments
  3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 329.030; 42 U.S.C. 3796gg-8
  4. 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? 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 (+/-): \$0  
 Expenditures (+/-): \$0  
 Other Explanation: N/A

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Kentucky Law Enforcement Council**  
**(Amendment)**

**503 KAR 1:170. Career Development Program.**

RELATES TO: KRS 15.310  
 STATUTORY AUTHORITY: KRS 15.330(1)(d)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(d) authorizes the Kentucky Law Enforcement Council (KLEC) to establish and prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and telecommunicators. This administrative regulation establishes a Career Development Program for Kentucky certified peace officers and telecommunicators.

- Section 1. Definitions. (1) "Chief executive" means the highest level position in a law enforcement agency with direct operational and administrative responsibility for the policies and performance of the agency.
- (2) "Conceptual skills course" means a course that emphasizes planning, organization, goal setting abilities, or strategic orientation.
- (3) "Executive" means a position in the immediate line of au-

thority under the chief executive who has the delegated responsibility for operational and administrative functions of the agency or division [the immediate line of authority directly under the chief executive, holding the rank of major, deputy chief, chief deputy, assistant director, or above].

- (4) "Human skills course" means a course relating to cultural diversity, problem solving, leadership, interpersonal communication, group communication, or training abilities.
- (5) "KLEC" means the Kentucky Law Enforcement Council.
- (6) "Manager" means a position within law enforcement or telecommunications:
  - (a) Between the executive and supervisor positions; and
  - (b) Which is responsible for the supervision of supervisory employees and may involve the planning, organization, public relations, discipline, or general administrative work.
- (7) "Supervisor" means a position which:
  - (a) Is responsible for the direct supervision of nonsupervisory personnel; and
  - (b) May also perform line duties in law enforcement or telecommunications.
- (8) "Technical skills course" means a course relating to operational or tactical abilities.

Section 2. Skill Area Determination. (1) Based on the definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or telecommunications course should be categorized as a:

- (a) Conceptual skills course;
  - (b) Human skills course; or
  - (c) Technical skills course.
- (2) When a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.
- (3) A law enforcement or telecommunications course may be categorized in up to two (2) different categories.

Section 3. Application for Career Development Program. A peace officer or telecommunicator who wishes to apply for a particular career step certificate shall:

- (1) Complete a "CDP-1 Participant Commitment Form", which shall include the following:
- (a) Applicant's name and agency;
  - (b) Social Security number and date of birth;
  - (c) The program to which the participant wishes to commit;
  - (d) Signature of the participant; and
  - (e) Signature of the participant's agency head.
- (2) Submit an application form for the specific career development step to which the participant wishes to apply. The application form shall include the following information:
- (a) Applicant's name and agency;
  - (b) Social Security number and date of birth;
  - (c) Date of employment with current agency;
  - (d) Current rank or title and date of promotion to that position;
  - (e) Employment history;
  - (f) Training history;
  - (g) Educational history;
  - (h) Signature of program applicant; and
  - (g) College and training credit hours applied to the requirements of the particular program to which the participant wishes to apply.
- (3) Submit an official [a] copy of a transcript or other documentation showing that the applicant has successfully completed required:
- (a) KLEC-approved or recognized courses; and
  - (b) College courses.

Section 4. In-service Training, College, Out-of-state Work Experience, Retroactive Credit. (1) All in-service training applied toward a career development step shall be approved or recognized by the KLEC.

- (2) A program participant shall not receive more than one (1) program credit for an in-service training course.
- (3) Retroactivity. Participants in the Career Development Pro-

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gram may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.

(4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.

(5) A program participant may apply out-of-state work experience toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5. Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and bachelors degree;

(b) Four (4) years of experience and associates degree;

(c) Four (4) years of experience and ninety-five (95) hours of college credit;

(d) Five (5) years of experience and eighty (80) hours of college credit;

(e) Six (6) years of experience and sixty-five (65) hours of college credit;

(f) Seven (7) years of experience and fifty (50) hours of college credit; or

(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:

(1) Complete the Intermediate Law Enforcement Career Step;

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and masters degree;

(b) Six (6) years of experience and bachelors degree;

(c) Nine (9) years of experience and associates degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 7. Law Enforcement Supervisor Certificate. To demonstrate proficiency in the Law Enforcement Supervisor Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with

KRS 15.386(2);

(2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:

(a) Forty (40) hours of technical skills development courses;

(b) Forty (40) hours of conceptual skills development courses; and

(c) Eighty (80) hours in one (1) of the following options of courses:

1. Academy of Police Supervision; [or]

2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or

3. A KLEC-approved or recognized equivalent course. [and]

(3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and masters degree;

(b) Four (4) years of experience and bachelors degree;

(c) Six (6) years of experience and associates degree;

(d) Six (6) years of experience and ninety-five (95) hours of college credit;

(e) Seven (7) years of experience and eighty (80) hours of college credit;

(f) Eight (8) years of experience and sixty-five (65) hours of college credit; or

(g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 8. Law Enforcement Management Certificate. To demonstrate proficiency in the Law Enforcement Management Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete the:

(a) Department of Criminal Justice Training Criminal Justice Executive Development Course;

(b) Department of Criminal Justice Training School for Strategic Leadership;

(c) Federal Bureau of Investigation (FBI) National Academy;

(d) [e] University of Louisville Southern Police Institute Administrative Officers Course;

(e) [d] Northwestern University School of Police Staff and Command;

(f) [e] Police Executive Leadership College; or

(g) [f] Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and

(3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and masters degree;

(b) Four (4) years of experience and bachelors degree;

(c) Six (6) years of experience and associates degree;

(d) Six (6) years of experience and ninety-five (95) hours of college credit;

(e) Seven (7) years of experience and eighty (80) hours of college credit;

(f) Eight (8) years of experience and sixty-five (65) hours of college credit; or

(g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 9. Law Enforcement Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Executive Career Step, a peace officer shall:

(a) Have active peace officer certification in accordance with KRS 15.386(2);

(b) Successfully complete:

1. Orientation for new chiefs, offered by the Department of Criminal Justice Training;

2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;

3. Department of Criminal Justice Training School for Strategic

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Leadership:

4. Three (3) police executive command [decisions] courses, offered by the Department of Criminal Justice Training;

5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or

6. [4-] An executive level course as offered by the:

- a. Federal Bureau of Investigation (FBI);
- b. University of Louisville Southern Police Institute;
- c. Northwestern University School of Police Staff and Command;

- d. Institute of Police Technology and Management; or
- e. Institute for Law Enforcement Administration;
- (c) Successfully complete one (1) of the following:

1. 120 hours of training in conceptual or human skills development; or

2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and

(d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

- 1. Two (2) years of experience and bachelors degree;
- 2. Three (3) years of experience and sixty (60) hours of college credit; or
- 3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 10. Law Enforcement Chief Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Executive Career Step, a peace officer shall:

(a) Successfully complete:

1. Orientation for new chiefs, offered by the Department of Criminal Justice Training;

2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;

3. Department of Criminal Justice Training School for Strategic Leadership;

4. Three (3) police executive command [decisions] courses, offered by the Department of Criminal Justice Training;

5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or

6. [4-] An executive level course as offered by the:

- a. Federal Bureau of Investigation (FBI);
- b. University of Louisville Southern Police Institute;
- c. Northwestern University School of Police Staff and Command;

- d. Institute of Police Technology and Management; or
- e. Institute for Law Enforcement Administration;
- (b) Successfully complete one (1) of the following:

1. 120 hours of training in conceptual or human skills development; or

2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and

(c) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

- 1. Two (2) years of experience and bachelors degree;
- 2. Three (3) years of experience and sixty (60) hours of college credit; or
- 3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:

(a) Eighty (80) hour criminal investigations I [basic investigator's] course; and

(b) 120 training hours in investigative courses identified by the KLEC; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

- (a) Four (4) years of experience and masters degree;
- (b) Six (6) years of experience and bachelors degree;
- (c) Nine (9) years of experience and associates degree;
- (d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of in-service training, consisting of:

(a) Eighty (80) hour basic accident investigation course or a KLEC-approved equivalent; and

(b) 120 training hours in traffic courses identified by the KLEC; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

- (a) Four (4) years of experience and masters degree;
- (b) Six (6) years of experience and bachelors degree;
- (c) Nine (9) years of experience and associates degree;
- (d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;

(b) Forty (40) hours shall be in technical skills development; and

(c) Forty (40) hours shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and bachelors degree;

(b) Four (4) years of experience and associates degree;

(c) Four (4) years of experience and ninety-five (95) hours of college credit;

(d) Five (5) years of experience and eighty (80) hours of college credit;

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- (e) Six (6) years of experience and sixty-five (65) hours of college credit;
- (f) Seven (7) years of experience and fifty (50) hours of college credit; or
- (g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 14. Basic Telecommunicator Certificate. To demonstrate proficiency in the Basic Telecommunications Career Step, a person shall successfully complete the following courses:

- (1) Twenty-four (24) hours of emergency medical dispatch;
- (2) Forty (40) hours of basic telecommunications;
- (3) Eight (8) hours of critical incident; ~~and~~
- (4) Eight (8) hours of family violence;
- (5) Spanish for the Telecommunicator; and
- (6) Incident command.

Section 15. Intermediate Telecommunicator Certificate. To demonstrate proficiency in the Intermediate Telecommunications Career Step, a person shall:

- (1) Complete the Basic Telecommunications Career Step;
- (2) Complete the following courses:
  - (a) Eight (8) hours of customer service;
  - (b) Eight (8) hours of developing high performance teams;
  - (c) Sixteen (16) hours of cultural awareness [diversity]; and
  - (d) Sixteen (16) hours of advanced emergency medical dispatch; and
- (3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Three (3) years of experience and thirty (30) hours of college credit;
  - (b) Four (4) years of experience and twenty-five (25) hours of college credit;
  - (c) Five (5) years of experience and twenty (20) hours of college credit;
  - (d) Six (6) years of experience and fifteen (15) hours of college credit;
  - (e) Seven (7) years of experience and ten (10) hours of college credit; or
  - (f) Eight (8) hours of experience and five (5) hours of college credit.

Section 16. Advanced Telecommunicator Certificate. To demonstrate proficiency in the Advanced Telecommunications Career Step, a person shall:

- (1) Complete the Intermediate Telecommunications Career Step;
- (2) Complete the following courses:
  - (a) Forty (40) hours of communications training officer; and
  - (b) An eight (8) hours KLEC-approved telecommunications ethics course;
- (3) Complete eight (8) hours of elective courses from any telecommunications course approved by the KLEC; and
- (4) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Four (4) years of experience and forty-five (45) hours of college credit;
  - (b) Five (5) years of experience and forty (40) hours of college credit;
  - (c) Six (6) years of experience and thirty-five (35) hours of college credit;
  - (d) Seven (7) years of experience and thirty (30) hours of college credit;
  - (e) Eight (8) years of experience and twenty-five (25) hours of college credit; or
  - (f) Nine (9) years of experience and twenty (20) hours of college credit.

Section 17. Telecommunications Supervisor Certificate. To demonstrate proficiency in the Telecommunications Supervisor

Career Step, a person shall:

- (1) Complete the Basic Telecommunications Career Step;
- (2) Successfully complete:
  - (a) The forty (40) hour first line supervision course; and
  - (b) Sixteen (16) hours of supervision training approved by the KLEC; and
- (3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and an associates degree;
  - (b) Three (3) years of experience and fifty-five hours of college credit;
  - (c) Four (4) years of experience and fifty (50) hours of college credit;
  - (d) Five (5) years of experience and forty-five (45) hours of college credit;
  - (e) Six (6) years of experience and forty (40) hours of college credit;
  - (f) Seven (7) years of experience and thirty-five (35) hours of college credit; or
  - (g) Eight (8) years of experience and thirty (30) hours of college credit.

Section 18. Telecommunications Director/Manager Certificate. To demonstrate proficiency in the Telecommunications Director/Manager Career Step, a person shall:

- (1) Obtain the Telecommunications Supervisor Certificate;
- (2) Successfully complete:
  - (a) The forty (40) hour telecommunications manager course; and
  - (b) Forty (40) hours of elective supervisory or management courses approved by the KLEC; and
- (3) Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
  - (a) Two (2) years of experience and a bachelors degree;
  - (b) Four (4) years of experience and an associates degree;
  - (c) Five (5) years of experience and sixty (60) hours of college credit;
  - (d) Six (6) years of experience and fifty-five (55) hours of college credit;
  - (e) Seven (7) years of experience and fifty (50) hours of college credit;
  - (f) Eight (8) years of experience and forty-five (45) hours of college credit;
  - (g) Nine (9) years of experience and forty (40) hours of college credit; or
  - (h) Ten (10) years of experience and thirty-five (35) hours of college credit.

Section 19. Certificate of Completion. The KLEC shall issue a certificate to a peace officer or telecommunicator upon completion of a career development step.

Section 20. Maintenance of Records. All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Career Development Program Participant Commitment Form," KLEC Form CDP-1, (August 2006 [9/03] edition);
- (b) "Application for Intermediate Law Enforcement Officer Certificate", KLEC Form CDP-2, (August 2006 [9/03] edition);
- (c) "Application for Advanced Law Enforcement Officer Certificate", KLEC Form CDP-3, (August 2006 [9/03] edition);
- (d) "Application for Law Enforcement Officer Investigator Certificate", KLEC Form CDP-4, (August 2006 [9/03] edition);
- (e) "Application for Law Enforcement Traffic Officer Certificate", KLEC Form CDP-5, (August 2006 [9/03] edition);
- (f) "Application for Advanced Deputy Sheriff Certificate", KLEC Form CDP-6, (August 2006 [9/03] edition);

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- (g) "Application for Law Enforcement Supervisor Certificate", KLEC Form CDP-7, (August 2006 [9/03] edition);
- (h) "Application for Law Enforcement Manager [Management] Certificate", KLEC Form CDP-8, (August 2006 [9/03] edition);
- (i) "Application for Law Enforcement Executive Certificate", KLEC Form CDP-9, (August 2006 [9/03] edition);
- (j) "Application for Basic Telecommunicator Certificate", KLEC Form CDP-10, (9/03 edition);
- (k) "Application for Intermediate Telecommunicator Certificate", KLEC Form CDP-11, (9/03 edition);
- (l) "Application for Advanced Telecommunicator Certificate", KLEC Form CDP-12, (9/03 edition);
- (m) "Application for Telecommunications Supervisor Certificate", KLEC Form CDP-13, (9/03 edition);
- (n) "Application for Telecommunications Director/Manager Certificate", KLEC Form CDP-14, (9/03 edition); and
- (o) "Law Enforcement Chief Executive Certificate", KLEC Form CDP-15, (9/03 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY BALL, Executive Director  
 For WILLIAM F. WALSH, Ph.D., Chair  
 APPROVED BY AGENCY: May 15, 2007  
 FILED WITH LRC: May 15, 2007 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on June 21, 2007 at 9 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by June 14, 2007, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July, 2007. 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 D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the Kentucky Law Enforcement Council Career Development Program.

(b) The necessity of this administrative regulation: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunicators. The administrative regulation is necessary to set out the requirements of participating in and completing the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 15.330(1)(d), which authorizes the establishment of voluntary career development programs by the Kentucky Law Enforcement Council.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunicators. The administrative regulation establishes the requirements of the career development program in compliance with KRS 15.330(1)(d).

(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 add additional courses that may be applied toward participation in the career development program and also amend various forms.

(b) The necessity of the amendment to this administrative regulation: To add additional courses for eligibility and to update application forms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunicators by the Kentucky Law Enforcement Council.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will expand the list of courses that may be applied for credit toward the career development program and will also update forms to delete unneeded information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Although this program is voluntary and not all will participate, this administrative regulation could benefit all law enforcement and telecommunications personnel in the Commonwealth, which is approximately 8,000 in number.

(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 additional courses for which they can be given credit in the CDP program. They will be able to submit condensed applications for participation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendment should not cost anything. Participation is voluntary and free of charge.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have additional courses for which they can be granted credit. They will have fewer parts of forms to complete.

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

(a) Initially: There should not be any new costs above that currently incurred to administer the Career Development Program, which was originally implemented in 2003.

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(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 Sections 2 and 3 of the Kentucky Constitution.

**FISCAL NOTE ON LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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? For those who choose to participate, this administrative regulation will affect city and county police departments, sheriffs' offices, and telecommunicators. This administrative regulation is intended to provide a



means by which local law enforcement officers and telecommunications can work toward a "career track" in their specialized field of law enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(d).

4. 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? The program was originally implemented in 2003 and cost approximately \$2,000

(d) How much will it cost to administer this program for subsequent years? Approximately \$1,000-\$1,500

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

Revenues (+/-): None  
Expenditures (+/-): None  
Other Explanation: None

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Public Protection**  
**Office of Insurance**  
**Life Insurance Division**  
**(Amendment)**

**806 KAR 14:005. Rate and form filing for life insurers.**

RELATES TO: KRS 304.4-010, 304.14-120, 304.14-190

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director [Commissioner] of Insurance to make reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 [through 304.99-152]. This administrative regulation establishes rate and form filing procedures for life insurers.

Section 1. Definitions.

(1) "Executive director" is defined in KRS 304.1-050(1).

(2) "Office" is defined in KRS 304.1-050(2).

Section 2.~~[4-~~(4) Life, ~~[and] annuity, and viatical settlement~~ form filings shall be accompanied by a transmittal document, certification Form L-TD Life. ~~[face sheet and verification form, Form F-1 Life.~~

~~(2) Life and annuity form filings filed for certification shall be accompanied by a certification form, Form L-2 Life.~~

~~(3) Life and annuity form filings shall be accompanied by actuarial certification, Form L-3 Life.]~~

Section 3.~~[2-~~ An entity may include in a filing for a particular insurance company any number of forms or documents, filed together on a particular date, pertaining to a single line of insurance.

Section 4.~~[3-~~ Since KRS 304.4-010(2) requires all fees payable under the insurance code to be collected in advance,] The period of time in which the executive director [commissioner] may affirmatively approve or disapprove the filing shall not begin to run until both the filing and appropriate fee are received by the office [department].

Section 5.~~[4-~~ A policy or contract form shall not be used in Kentucky until:

(1) It has been approved; and

(2) If rates for the form are required by law to be approved, the appropriate rate schedule has been approved.

Section 6.~~[5-~~ Each form [filing] document, including riders and endorsements, shall be identified by a form [filing] number in the lower left-hand corner of each page of the document.

Section 7.~~[6-~~ If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall:

~~(4)~~ be accompanied by a letter of explanation from the filing entity setting forth:

~~(1)[(a)]~~ All changes contained in the newly-filed form;

~~(2)[(b)]~~ The effect, if Any effect, the changes have upon the hazards purported to be assumed by the policy; ~~[and]~~

~~(3)[(c)]~~ The rates applicable to the policy, if required; and

~~(4) A revised form number. [(2) Show a revision in the form filings number.]~~

Section 8.~~[7-~~ If a filing is disapproved, the form numbers used on each form within this filing shall not be used on any form of a future filing.

Section 9.~~[8-~~ (1) Facsimile signatures of company officers, attorneys-in-fact, employees, and representatives shall not be required and shall not be submitted with any filing.

(2) A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 10.~~[9-~~ (1) Life insurance companies may file their rates and forms in an electronic format established by the National Association of Insurance Commissioners, in the manner prescribed by that format.

(2) An electronic filing shall substitute for any physical filing.

Section 11.~~[10-~~ Incorporation by Reference. ~~[(4)]~~ The following material is incorporated by reference:

(1) Certification Form L-TD Life, Transmittal Document Office of Insurance (1/1/06 edition)[(a) Form L-2 Life, "Policy Forms Filing Certification Privilege Program", Department of Insurance, (04/02);

(b) Form F-1 Life, "Life Insurance Face Sheet and Verification Form", (2 pages), Department of Insurance, (04/02); and

(c) Form L-3 Life, "Life and Annuity Filings Actuarial Certification Form", Department of Insurance, (04/02)].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office [Department] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's [department's] internet web site at: <http://doi.ppr.ky.gov/kentucky/> [[www.doi.state.ky.us](http://www.doi.state.ky.us)].

JULIE MIX MCPEAK, Executive Director

TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., (ET) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007, 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 July 2, 2007. 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rate and form filing procedures for life insurance companies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform procedures for the rate and form filings required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation will standardize rate and form filing procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation formalizes a procedure for complying with the statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes "commissioner" to "executive director" and "department" to "office." It also replaces the cover sheet for life and annuity filings with a new transmittal document, Form L-TD Life.

(b) The necessity of the amendment to this administrative regulation: This amendment makes technical changes to conform with the statute and updates the office's transmittal document for life and annuity form filings.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides a procedure for complying with the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a procedure for complying with the statute.

(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 approximately 520 insurers that are licensed to offer life insurance in Kentucky.

(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: Regulated entities will be required to use a new transmittal certification document, Form L-TD Life, with life filings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request. Therefore, the Office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation standardizes life filings and should reduce the overall cost of doing business for regulated entities by simplifying the filing process.

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

(a) Initially: The cost will be minimal.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for imple-

mentation 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: There will be no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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 Hospital and Provider Operations  
(Amendment)**

**907 KAR 3:005. Physicians' services.**

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 415.152, 415.174, 415.184, 440.50, 45 C.F.R. 160, 164, 42 U.S.C. 1320 - 1320d -8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

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Section 1. Definitions. (1) "Biologicals" means the definition of biologicals pursuant to 42 U.S.C. 1395x(t)(1).

(2) "Common practice" means a contractual partnership in which a physician assistant administers health care services under the employment and supervision of a physician.

(3)(2) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(4)(3) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

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

(6)(5) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(7) "Drug" means the definition of drugs pursuant to 42 U.S.C. 1395x(t)1.

(8)(6) "Emergency care" means:

(a) Covered inpatient and outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

(9)(7) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(10)(8) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u - 1;

2. 42 U.S.C. 1396a(a)(52) and 1396r - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. Has a designated package code of 2, 3, 4, or 5.

(11)(9) "Global period" means occurring during the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(12)(10) "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive Kentucky Transitional Assistance Program (K-TAP) benefits[K-TAP] and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP benefits and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP benefits and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive supplemental security income (SSI) benefits[SSI] and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive state supplementation program (SSP) benefits[SSP] and do not meet nursing facility patient status criteria in

accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022; or

(h) Pregnant women.

(13)(11) "Graduate medical education program" or "GME Program" means one (1) of the following:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined in 42 C.F.R. 413.75(b).

(14)(12) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires little additional resources; or

(b) Is clinically integral to the performance of the primary procedure.

(15)(13) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(16)(14) "KenPAC" means the Kentucky Patient Access and Care System.

(17)(15) "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System.

(18)(16) "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(19)(17) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(20)(18) "Medical resident" means one (1) of the following:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(21)(19) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one 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.

~~(22)~~~~(20)~~ "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

~~(23)~~~~(21)~~ "Other licensed medical professional" means a health care provider other than a physician, physician assistant, advanced registered nurse practitioner, certified registered nurse anesthetist, nurse midwife, or registered nurse who has been approved to practice a medical specialty by the appropriate licensure board.

~~(24)~~~~(22)~~ "Physician assistant" is defined in KRS 311.840(3).

~~(25)~~~~(23)~~ "Screening" means the evaluation of a recipient by a physician to determine the presence of a disease or medical condition and if further evaluation, diagnostic testing or treatment is needed.

~~(26)~~ "Special handling, storage, shipping, dosing or administration requirements" means one (1) or more of the following requirements as described in the dosing and administration section of a medication's package insert:

(a) Refrigeration of the medication;

(b) Protection from light until time of use;

(c) Overnight delivery;

(d) Avoidance of shaking or freezing; or

(e) Other protective measures not required for most orally-administered medications.

~~(27)~~~~(24)~~ "Supervising physician" is defined in KRS 311.840(4).

~~(28)~~~~(25)~~ "Supervision" is defined in KRS 311.840(6).

~~(29)~~~~(26)~~ "Timely filing" means receipt of a claim by Medicaid:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

~~(30)~~~~(27)~~ "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1) A participating physician shall be licensed as a physician in the state in which the medical practice is located.

(2) A participating physician 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.

(3) A participating physician shall comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d - 8 and 45 C.F.R. Parts 160 and 164.

(4) A participating physician shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of that decision prior to the delivery of service. If the provider accepts the recipient, the provider:

(a) Shall bill Medicaid rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

2. Incorrect billing procedures, including incorrect bundling of services;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

(a) Medically necessary;

(b) ~~[Effective August 1, 2006,]~~ Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and

(d) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

(a) A service provided by a medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

(b) A service provided by a locum tenens physician who provides direct physician contact;

(c) A radiology service, imaging service, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;

(d) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;

(e) A preauthorized sleep disorder service if provided in a physician operated and supervised sleep disorder diagnostic center;

(f) A telehealth consultation provided by a consulting medical specialist in accordance with 907 KAR 3:170; or

(g) A service provided by a physician assistant in accordance with Section 7 of this administrative regulation.

(3) A service provided by an individual who meets the definition of other licensed medical professional shall be covered if:

(a) The individual is employed by the supervising physician;

(b) The individual is licensed in the state of practice; and

(c) The supervising physician has direct physician contact with the recipient.

Section 4. Service Limitations. (1) A covered service provided to a recipient placed in "lock-in" status in accordance with 907 KAR 1:677 shall be limited to a service provided by the lock-in provider unless:

(a) The service represents emergency care; or

(b) The recipient has been referred by the "lock-in" provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 1:034, Sections 3 through 5.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) Except for the following, a drug administered in the physician's office shall not be covered as a separate reimbursable service through the physician program:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device; [or]

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that is:

1. Not typically self-administered;

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2. Not excluded as a noncovered immunization or vaccine; and  
3. Requires special handling, storage, shipping, dosing or administration.

(5) 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 the federal regulations.

(6) Coverage for a service designated as a psychiatry service CPT code and provided by a physician other than a board certified or board eligible psychiatrist shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(7)(a) Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

(b) Coverage for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per year, per diagnosis, per physician, except as established in paragraph (c) of this subsection.

(c) An evaluation and management service with a corresponding CPT of 99214 or 99215 exceeding the limit established in paragraph (b) of this subsection shall be covered if prior authorized by the department.

(8) 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.

(9)(a) An anesthesia service shall be covered if administered by an anesthesiologist who remains in attendance throughout the procedure.

(b) Except for an anesthesia service provided by an oral surgeon, an anesthesia service, including conscious sedation, provided by a physician performing the surgery shall not be covered.

(10) The following services shall not be covered:

(a) An acupuncture service;

(b) Allergy immunotherapy for a recipient age twenty-one (21) years or older;

(c) An autopsy;

(d) A cast or splint application in excess of the limits established in 907 KAR 3:010, Section 4(5) and (6);

(e) Except for therapeutic bandage lenses, contact lenses;

(f) A hysterectomy performed for the purpose of sterilization;

(g) Lasik surgery;

(h) Paternity testing;

(i) A procedure performed for cosmetic purposes only;

(j) A procedure performed to promote or improve fertility;

(k) Radial keratotomy;

(l) A thermogram;

(m) An experimental service which is not in accordance with current standards of medical practice; or

(n) A service which does not meet the requirements established in Section 3(1) of this administrative regulation.

Section 5. Prior Authorization Requirements and KenPAC Referral Requirements. (1) The following procedures shall require prior authorization by the department:

(a) Magnetic resonance imaging (MRI);

(b) Magnetic resonance angiogram (MRA);

(c) Magnetic resonance spectroscopy;

(d) Positron emission tomography (PET);

(e) Cineradiography/videoradiography;

(f) Xeroradiography;

(g) Ultrasound subsequent to second obstetric ultrasound;

(h) Myocardial imaging;

(i) Cardiac blood pool imaging;

(j) Radiopharmaceutical procedures;

(k) Gastric restrictive surgery or gastric bypass surgery;

(l) A procedure that is commonly performed for cosmetic purposes;

(m) A surgical procedure that requires completion of a federal consent form; or

(n) An unlisted procedure or service.

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service; or

(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code.

(4) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner may request prior authorization from the department.

(5) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner shall request prior authorization by mailing or faxing:

(a) A written request to the department with sufficient information to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and

(b) If applicable, any required federal consent forms.

(6) 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 6. Therapy Limits. (1) Speech therapy shall be limited to:

(a) Ten (10) visits per twelve (12) months for a recipient of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan.

(2) Physical therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan.

(3) Occupational therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan.

(4) The therapy limits established in subsection (1) through (3) of this section shall be over-ridden if the department determines that additional visits beyond the limit are medically necessary.

(5)(a) To request an override:

1. The provider shall telephone or fax the request to the department; and

2. The department shall review the request in accordance with the provisions of 907 KAR 3:130 and notify the provider of its decision.

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563.

(6) The limits established in subsections (1), (2), and (3) of this section shall not apply to a recipient under twenty-one (21) years of age. Except for recipients under age twenty-one (21), prior authorization is required for each visit that exceeds the limit established in subsection (1) through (3) of this section.

Section 7. Physician Assistant Services. (1) With the exception of a service limitation specified in subsections (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of this administrative regulation;

(b) The service is within the legal scope of certification of the physician assistant;

(c) The service is billed under the physician's individual provider number with the physician assistant's number included; and

(d) The physician assistant complies with:

1. KRS 311.840 to 311.862; and

2. Sections 2(2) and (3) of this administrative regulation.

(2) A same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

- (a) A physician noncovered service specified in Section 4(10) of this administrative regulation;
- (b) An anesthesia service;
- (c) An obstetrical delivery service; or
- (d) A service provided in assistance of surgery.

Section 8. Appeal Rights. (1) 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.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) 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.

GLENN JENNINGS, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: May 13, 2007

FILED WITH LRC: May 15, 2007, at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2007, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2007, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business July 2, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the participation requirements for physicians and the coverage criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical 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 for the provision of medically necessary physician 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: This amendment establishes coverage of administration of a long acting injectable risperidone or an injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine and requires

special handling, storage, shipping, dosing or information; and increases evaluation and management service coverage from one (1) per recipient per year to two (2) per recipient per year with additional coverage contingent upon department prior authorization.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure or enhance recipient access to physician care via the department's coverage structure and to promote recipient health, safety and welfare by reimbursing for administration of drugs or biologicals requiring special handling or similar.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Reimbursement policies pertaining to covered Medicaid services impacts all physicians enrolled in the Kentucky Medicaid program (approximately 15,000).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than restrict coverage, the amendments favor providers, enhancing coverage. The amendment extends coverage to administration of certain drugs and biologicals which require special handling or similar and expands evaluation and management service per recipient per year coverage from one (1) to two (2) with additional allowed if prior authorized 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): No cost is anticipated, the amendments enhance coverage rather than restrict.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments enhance coverage rather than restrict coverage. The amendments extend coverage to administration of certain drugs and biologicals which require special handling or similar and expands evaluation and management service per recipient per year coverage from one (1) to two (2) with additional allowed if prior authorized by the department.

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

(a) Initially: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. The Department for Medicaid Services (DMS) anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(b) On a continuing basis: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(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 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the 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 Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all physicians enrolled in the Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 447 Subpart B.

4. 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 for state or local governments during the first year of implementation.

(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 for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Hospital and Provider Operations**  
**(Amendment)**

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 42 C.F.R. 440.50, 447 Subpart

B, 42 U.S.C. 1396a, b, c, d, s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code which may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(3) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

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

(6) "Established patient" means one who has received professional services from the provider within the past three (3) year period.

(7) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(8) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires few additional physician resources; or

(b) Is clinically integral to the performance of the primary procedure.

(9) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(10) "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(11) "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(12) "Medicaid Physician Fee Schedule" means a list of current reimbursement rates for physician services established by the department in accordance with Section 3 of this administrative regulation.

(13) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(14) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(15) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one 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.

(16) "Physician assistant" is defined in KRS 311.840(3).

(17) "Physician group practice" means two (2) or more licensed physicians who have enrolled both individually and as a group and share the same Medicaid group provider number.



(18) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(19) "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.

(20) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(21) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(22) "Usual and customary charge" means the uniform amount which a physician charges the general public for a specific medical procedure or service.

Section 2. Reimbursement. (1) Reimbursement for a covered service shall be made to:

- (a) The individual participating physician; or
- (b) A physician group practice enrolled in the Kentucky Medicaid Program.

(2) Except as provided in subsections (3) to ~~(9)~~~~(8)~~ of this section, reimbursement for a covered service shall be the lesser of:

- (a) The physician's usual and customary charge; or
- (b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with Section 3 of this administrative regulation.

(3) If there is not an established fee in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

(4) Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

(5) If cost-sharing is required for a service to a recipient, the cost-sharing provisions established in 907 KAR 1:604 shall apply.

(6) Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as follows:

(a) A second anesthesia service provided by a provider to a recipient on the same date of service and reported by the addition of the two (2) digit modifier twenty-three (23) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(b) A professional component of a service reported by the addition of the two (2) digit modifier twenty-six (26) shall be reimbursed at the product of:

- 1. The Medicare value assigned to the physician's work; and
- 2. The dollar conversion factor specified in Section 3(2) of this administrative regulation;

(c) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

- 1. The Medicare value assigned to the practice expense involved in the performance of the procedure; and
- 2. The dollar conversion factor specified in Section 3(2) of this administrative regulation;

(d) A bilateral procedure reported by the addition of the two (2) digit modifier fifty (50) shall be reimbursed at 150 percent of the amount assigned to the CPT code;

(e) An assistant surgeon procedure reported by the addition of the two (2) digit modifier eighty (80) shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon;

(f) A procedure performed by a physician acting as a locum tenens for a Medicaid-participating physician reported by the addition of the two (2) character modifier Q six (6) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(g) An evaluation and management telehealth consultation service provided by a consulting medical specialist in accordance with 907 KAR 3:170 and reported by the two (2) letter modifier "GT" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code; and

(h) A level II National HCPCS modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee

Schedule amount for the applicable code.

(7) Except for a service specified in paragraphs (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:029.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital or emergency room visit or in addition to a laboratory test.

(8) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital or emergency room visit if performed by the same provider.

(9) The department shall reimburse a flat rate of seventy-two (72) dollars per office visit for an office visit occurring after 5 p.m. Monday through Friday or occurring after 12 p.m. on Saturday or anytime Sunday.

Section 3. Reimbursement Methodology. (1) ~~Except for~~~~With the exception of~~ a service specified in subsections (3) through ~~(7)~~~~(6)~~ of this section:

(a) The rate for a nonanesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The flat rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the actual~~average~~ amount of time units spent on that specific procedure (designated as Z).

~~1. [The average time units shall be a static number based upon average time units obtained by the department.~~

~~2.] The formula for obtaining a covered anesthesia service's flat rate shall be X multiplied by (Y plus Z).~~

~~2.[3.] The flat rate for a covered anesthesia service shall not exceed the rate that was in effect on June 1, 2006 by more than twenty (20) percent.~~

(2) The dollar conversion factor shall be:

(a) Thirteen (13) dollars and eighty-six (86) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all nonanesthesia related services.

(3) For the following services, reimbursement shall be the lesser of:

(a) The actual billed charge;

(b) A fixed fee of three (3) dollars and thirty (30) cents for:

1. Administration of a pediatric vaccine to a Medicaid recipient under the age of twenty-one (21); or

2. Administration of a flu vaccine;

(c) For delivery-related anesthesia services, a fixed rate described as follows:

1. Vaginal delivery, \$200;

2. Cesarean section, \$320;

3. Neuroaxial labor anesthesia for a vaginal delivery or cesarean section, \$335;

4. Additional anesthesia for cesarean delivery following neuroaxial labor anesthesia for vaginal delivery shall be twenty-five (25) dollars;

5. Additional anesthesia for cesarean hysterectomy following neuroaxial labor anesthesia shall be twenty-five (25) dollars; or

(d) A fixed rate of twenty-five (25) dollars for anesthesia add-on services provided to a recipient under age one (1) and over age seventy (70).

(4) Except as established in subsection (5) or (7)(c) of this section, the department shall reimburse for a covered drug or service specified in 907 KAR 3:005, Section 4(4)(a) through (k)(f) shall be reimbursed] at the lesser of the:

(a) Actual billed charge; or

(b) Average wholesale price (AWP) minus ten (10) percent.

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(5) If a service covered pursuant to 907 KAR 3:005, Section 4(4)(i) is provided to an individual covered under both Medicaid and Medicare and by a physician employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall reimburse for the service at the same rate it reimburses for the service provided to a Medicaid recipient except that the department shall reduce reimbursement by the amount of the third party obligation.

(6) Reimbursement for a covered service provided by a physician assistant shall be:

- (a) Made to the employing physician; or
- (b) Included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, rural health clinic, or comprehensive care center.

(7)(a)[(6)(a)] Except for an item identified in paragraph (b) or (c) of this subsection, reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this section and Section 4 of this administrative regulation.

(b) Except as established in paragraph (c) of this subsection, if provided by a physician assistant, an injectable antibiotic, antineoplastic chemotherapy agent or a contraceptive identified in 907 KAR 3:005, Section 4(4)(a) through (k)(4), shall be reimbursed at the lesser of the:

1. Actual billed charge; or
2. Average wholesale price (AWP) of the drug minus ten (10) percent.

(c) If a service covered pursuant to 907 KAR 3:005, Section 4(4)(i) is provided to an individual covered under both Medicaid and Medicare and by a physician assistant employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall reimburse for the service at the same rate it reimburses for the service provided to a Medicaid recipient except that the department shall reduce reimbursement by the amount of the third party obligation.

Section 4. Reimbursement Limitations. (1)(a) With the exception of chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215~~representing medical decision-making of moderate or high complexity for an established patient~~ shall be limited to two (2)~~one (1)~~ evaluation and management service of either moderate complexity or high complexity~~per recipient, per diagnosis,~~ per twelve (12) months.

(b) An additional evaluation and management service referenced in paragraph (a) of this subsection shall be covered if prior authorized by the department.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of this limit shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

- (a) Preoperative and postoperative visits;
- (b) Administration of the anesthetic;
- (c) Administration of fluids and blood incidental to the anesthesia or surgery;
- (d) Postoperative pain management;
- (e) Preoperative, intraoperative, and postoperative monitoring services; and
- (f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance by epidural or spinal injection for the control of chronic pain shall be limited to three (3) injections per six (6) month period per recipient.

(4) If related to the surgery and provided by the physician who performs the surgery, 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 within:
  1. Ninety (90) days following the date of major surgery; or
  2. 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.

(5) Reimbursement for the application of a cast or splint shall be limited to two (2) per ninety (90) day period for the same injury or condition.

(6) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

- (a) A temporary cast or splint, if applied by the same physician who performed the surgical procedure;
- (b) The initial cast or splint applied during or following the surgical procedure; and
- (c) A replacement cast or splint needed as a result of the surgical procedure if:

1. Provided within ninety (90) days of the procedure by the same physician; and
2. Applied for the same injury or condition.

(7) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(8) When 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.

(9) Reimbursement shall not be made for the cost of a vaccine that is administered by a physician.

Section 5. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 4 of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician employed by a state-supported school of medicine that is part of a university health care system that includes a:

- (a) Teaching hospital; and
- (b) Pediatric teaching hospital.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall not exceed the physician's charge for the service provided and shall be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

- (a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;
- (b) Consistent with the requirements of 42 C.F.R. 447.325; and
- (c) Made on a quarterly basis.

Section 6. Appeal Rights. (1) 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.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) 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.

GLENN JENNINGS, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007, at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2007, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business July 2, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical 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 establishes the reimbursement criteria for payment of medically necessary physician services to eligible 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: This amendment establishes reimbursement for physician office visit care beyond typical working hours - extended hour rate is effective Monday through Friday 5 p.m. and weekends; increases evaluation and management service coverage from one (1) per recipient per year to two (2) per recipient per year with additional coverage contingent upon department prior authorization; inserts actual units of time into anesthesiology reimbursement as opposed to an average as was previously used; and establishes reimbursement for administration of a long acting injectable risperidone or an injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine and requires special handling, storage, shipping, dosing or information.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure or enhance recipient access to physician care via the department's reimbursement/coverage structure, to promote care delivered in a physician's office versus an emergency room setting and to promote recipient health, safety and welfare by reimbursing for administration of drugs or biologicals requiring special handling or similar.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety, and welfare within the extent and scope authorized by state and federal law by.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Reimbursement policies pertaining to covered

Medicaid services impacts all physicians enrolled in the Kentucky Medicaid program (approximately 15,000).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than introducing mandates on providers, the amendments favor providers, enabling them to receive a flat rate for providing care beyond normal office hours, for administering certain drugs and biologicals which require special handling or similar, will be reimbursed for actual units of time for anesthesiology and for two, (2) as opposed to one (1) evaluation and management service per recipient per year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers will receive an enhanced reimbursement for care provided beyond normal office hours, will be able to receive reimbursement for two (2) rather than one (1) evaluation and management service per recipient per year, will be reimbursed for administration of drugs or biologicals requiring special handling or similar and will be reimbursed for actual units of anesthesia service time. The amendments enhance provider reimbursement rather than cost providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments enhance provider reimbursement rather than cost providers.

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

(a) Initially: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. The Department for Medicaid Services (DMS) anticipates the enhanced reimbursement will cost money; however, the measures are necessary to enhance recipient access to physician care. Some enhancements, such as reimbursement for extended office hour care, may reduce department costs as recipients may turn to physician offices for care which they may typically seek in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety, and welfare.

(b) On a continuing basis: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. DMS anticipates the enhanced reimbursement will cost money; however, the measures are necessary to enhance recipient access to physician care. Some enhancements, such as reimbursement for extended office hour care, may reduce department costs as recipients may turn to physician offices for care which they may typically seek in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety, and welfare.

(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 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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the 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 Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all physicians enrolled in the Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 447 Subpart B.

4. 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 for state or local governments during the first year of implementation.

(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 for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates the enhanced reimbursement will cost money; however, the measures are necessary to enhance recipient access to physician care. Some enhancements, such as reimbursement for extended office hour care, may reduce department costs as recipients may turn to physician offices for care which they may typically seek in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(d) How much will it cost to administer this program for subsequent years? The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. DMS anticipates the enhanced reimbursement will cost money; however, the measures are necessary to enhance recipient access to physician care. Some enhancements, such as reimbursement for extended office hour care, may reduce department costs as recipients may turn to physician offices for care which they may typically seek in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MAY 15, 2007

GENERAL GOVERNMENT CABINET  
Kentucky Board of Medical Licensure  
(New Administrative Regulation)

201 KAR 9:460. Written plan.

RELATES TO: KRS 311.673(1), 311.680

STATUTORY AUTHORITY: KRS 311.673(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.673(1) authorizes the board to promulgate administrative regulations necessary to the certification and regulation of acupuncturists. This administrative regulation establishes a written plan required by KRS 311.680.

Section 1. To comply with the requirements of KRS 311.680, the written plan developed by each certified acupuncturist shall include, at a minimum, but is not limited to the following information:

(1) Consultation.

(a) The acupuncturist will identify the protocol(s) to be used to determine whether a potential patient suffers from one of the potentially serious disorders or conditions listed in KRS 311.680(3), and to determine the identity of the physician treating the patient for the disorder(s) or condition(s).

(b) The acupuncturist will identify the means of communication to be used - telephone, facsimile, letter, and/or electronic mail, to:

1. Notify the treating physician that the patient is seeking treatment by acupuncture and has disclosed that he or she is being treated for a potentially serious disorder or condition; and

2. Obtain verification that the patient is under the care of the physician.

(c) The acupuncturist will identify the method that will be used to document the consultation and verification made under subsection 2, supra. If notification and verification are accomplished by telephone, the documentation must include, at a minimum, the name of the staff member in the physician's office providing the verification.

(d) The acupuncturist will specify how many attempts he or she will make to obtain verification from the treating physician that the patient is under the care of before initiating treatment by acupuncture. A minimum of two (2) attempts is required before treatment is initiated, but the acupuncturist may choose a higher number of attempts.

(e) If, when verifying that the patient is under the physician's care for a potentially serious disorder or condition, the physician identifies possible contraindications for the use of acupuncture in the particular patient or recommends against the use of acupuncture, the acupuncturist may use her or his professional judgment to determine if it is reasonable to provide acupuncture treatment to that particular patient, considering all available facts.

(f) A potential patient will be considered to be "under the care of a physician" if receiving regular or recurring treatment from the physician or from a physician assistant being supervised by the physician or from an advanced registered nurse practitioner who is practicing in association with the physician.

(2) Emergency Transfer.

(a) The certified acupuncturist shall identify the nearest emergency room facility by name, address and telephone number.

(b) The certified acupuncturist shall identify the protocol(s) for emergency transfer of patients which shall include, at a minimum, the requirement that the acupuncturist will utilize the "911" emergency notification system to arrange for emergency transfer of the patient(s).

(3) Referral to appropriate health-care facilities or practitioners.

(a) The acupuncturist shall identify, by name, address and telephone number, at least two (2) physicians who have agreed to consult with and accept referrals from the acupuncturist.

(b) Where applicable, the acupuncturist will also identify health-care facilities, which have agreed to accept referrals from the acupuncturist.

DANNY M. CLARK, President

APPROVED BY AGENCY: May 10, 2007

FILED WITH LRC: May 14, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2007 at 10 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by June 20, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. 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: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7158.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest, II, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary to comply with KRS 311.680.

(b) The necessity of this administrative regulation: Establishes the requirements necessary to comply with KRS 311.680.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary to comply with KRS 311.680.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary to comply with KRS 311.680.

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

(a) How the amendment will change this existing administrative regulation; Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation; Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes; Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes. Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified acupuncturists, medical and osteopathic physicians, patients, and Kentucky Board of Medical Licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Every certified acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to appropriate healthcare facilities or to other healthcare practitioners operating within the scope of their authorized practice. The written plan shall be filed with the Board and maintained at the acupuncturist's practice location and updated to meet current regulatory requirements. If a patient discloses that he/she suffers from a condition as noted in KRS 311.680(3), the certified acupuncturist shall verify that the patient is under the care of a physician and consult with the treating physician before providing acupuncture

treatment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no financial impact for compliance 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 aid in promoting the continuity of care between the treating physician and acupuncturist as well as advocating patient safety.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Funding for implementation of this regulation comes directly from certified acupuncturist application fees.

(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 Board does not foresee any need to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

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

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. 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?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. 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?

(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?

(c) How much will it cost to administer this program for the first year?

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

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

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

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(Repealer)**

**401 KAR 63:023. Repeal of 401 KAR 63:020 and 63:021.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100,

224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation repeals 401 KAR 63:020 and 401 KAR 63:021, which are being replaced by the air toxic program of 401 KAR Chapter 64.

Section 1. The following administrative regulations are hereby repealed:

- (a) 401 KAR 63:020, Potentially hazardous matter or toxic substances; and
- (b) 401 KAR 63:021, Existing sources emitting toxic air pollutants.

TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 11, 2007

FILED WITH LRC: May 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held June 29, 2007 at 10 a.m. (local time) at the Transportation Cabinet Conference Center, Auditorium (C-105), 200 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone 502 573-3382, fax 502 573-3787, and electronic mail millie.ellis@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Millie Ellis, Environmental Technologist III

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation repeals 2 existing regulations which currently include the state-origin provisions for addressing air toxic emissions in the Commonwealth of Kentucky. The regulations being repealed are 401 KAR 63:020, Potentially hazardous matter or toxic substances and 401 KAR 63:021, Existing sources emitting toxic air pollutants.

(b) The necessity of this administrative regulation: In a separate action, the cabinet is promulgating an updated air toxics program, which will make these regulations redundant and unnecessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation repeals 2 administrative regulation that will no longer be necessary when the new administrative regulations of 401 KAR Chapter 64 are adopted and implemented.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 2 administrative regulation that will no longer be necessary or applicable.

(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 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. All sources that are currently subject to a permit condition under either of the repealed administrative regulations will be affected.

(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: After demonstrating that its air toxic emissions meet the requirements of the new 401 KAR Chapter 64, the source will become subject to the provisions of the new air toxic program.

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

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

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

(a) Initially: There are no known initial costs resulting from the repeal of these administrative regulations.

(b) On a continuing basis: There are no known continuing costs related to the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The proposed administrative regulation imposes no requirements; therefore, tiering is not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. 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? None are affected by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5) authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate no new revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate no new revenue.

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

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

quent years? There are no known costs.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

#### 401 KAR 64:001. Definitions for 401 KAR Chapter 64.

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 63

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 64, which establishes an air toxics program to address threats to public health and the environment from air toxic substances. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Act" means the Clean Air Act established under 42 U.S.C. 7401 to 7671q.

(2) "Additive" means the overall effect of exposure to two (2) or more chemicals, in which the resulting effect is equal to the sum of the independent effects of the chemicals.

(3) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(4) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(5) "Air quality model" or "air quality modeling" means a computerized set of mathematical equations that uses emissions, meteorological, and chemical transformation information to simulate the behavior and movement of air pollutants in the atmosphere and estimates the outdoor concentrations of air pollutants at specified locations, as provided in:

(a) The "Guideline on Air Quality Models," 40 C.F.R. Part 51, Appendix W; or

(b) A cabinet approved alternative.

(6) "Air toxic pollutant" means any air pollutant that causes or may cause cancer, respiratory, cardiovascular, or developmental effects, reproductive dysfunctions, neurological disorders, heritable gene mutations, or other serious or irreversible chronic health effects in humans.

(7) "Air toxic of concern" or "ATC" means an air toxic substance identified for a tiered risk assessment pursuant to 401 KAR 64:030, Air toxic safety net program.

(8) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference or equivalent method, but which has been demonstrated to the cabinet's satisfaction to produce adequate results for its determination of compliance.

(9) "Applicable requirement" means a state-origin or federally-enforceable requirement or standard that applies to a source.

(10) "Bioaccumulation" means the net accumulation of a substance by an organism as a result of uptake from all routes of exposure such as ingestion of food, intake of drinking water, dermal contact, or inhalation.

(11) "Cabinet" is defined in KRS 224.01-010.

(12) "Cancer risk estimate" means the probability of develop-



ing cancer from exposure to an air toxic substance or mixture of air toxic substances over a specified period of time and, in quantitative terms, is expressed in values ranging from zero, representing an estimate that harm certainly will not occur, to one (1), representing an estimate that harm certainly will occur.

(13) "Carcinogen" means an agent capable of inducing cancer.

(14) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(15) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(16) "De minimis emissions" means:

(a) Emissions from activities that qualify as insignificant or trivial activities under 401 KAR Chapter 52; and

(b) Emissions from the combustion of natural gas and other inherently-clean fuels.

(17) "Distance to the nearest receptor" means, for chronic exposures, the straight-line distance from a proposed or actual emissions point or an aggregated emissions point approved by the cabinet, to the nearest off-site location occupied by or reasonably accessible by any member of the public, including off-site work-sites, unless a qualified receptor is located on site.

(18) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit an air toxic substance and does not alter the definition of the term "unit" as used in 42 U.S.C. 7651 to 7651o and 40 C.F.R. Parts 72 to 78.

(19) "Enforceable as a practical matter" means that the emissions or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emissions standards and the portions of the source which are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting.

(20) "Federally enforceable requirement" means the items specified in this subsection as they apply to emission units at a source subject to 40 C.F.R. Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 C.F.R. Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;

(e) Standards or requirements of 42 U.S.C. 7651 to 7651o and 40 C.F.R. Parts 72 to 78;

(f) Requirements established pursuant to 42 U.S.C. 7661c(b) or 7414(a)(3) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for temporary sources permitted pursuant to 42 U.S.C. 7661c(e);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);

(i) A standard or other requirement for tank vessels adopted pursuant to 42 U.S.C. 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.

(21) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(22) "Generally available control technology" or "GACT" means a federal standard set under 42 U.S.C. 7412(d)(5).

(23) "Hazard identification" means the process of determining if exposure to an air toxic pollutant can cause an increase in the incidence of an adverse health effect and the nature and strength of the evidence for causation.

(24) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 U.S.C. 7412(b).

(25) "Hazard index" or "HI" means the sum of one (1) or more hazard quotients for multiple air toxic substances.

(26) "Hazard quotient" or "HQ" means the ratio of a single air toxic substance exposure level over a specified time period to a reference concentration (RfC) for that substance derived for a similar exposure period.

(27) "Level-of-concern" or "LOC" means the concentration of a TAP listed in 401 KAR 64:005, Sections 1 or 2, or a concentration determined pursuant to 401 KAR 64:005, Section 3, for an ATC identified for specific sources pursuant to 401 KAR 64:030, which represents a potential chronic inhalation public health concern of:

(a) A one-in-one million ( $1 \times 10^{-6}$ ) cancer risk; and

(b) A hazard index (HI) of one and zero-tenths (1.0).

(28) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown, which could have been reasonably prevented.

(29) "Maximum achievable control technology" or "MACT" means a federal standard set under 42 U.S.C. 7412(d).

(30) "Maximum Exposed Individual" or "MEI" means the highest estimated risk to a receptor, or exposed individual, regardless of whether people are expected to occupy that area.

(31) "Maximum individual risk" or "MIR" means the highest estimated risk to a receptor, or exposed individual, in areas that people are believed to occupy.

(32) "Microgram" or " $\mu\text{g}$ " means one-millionth of a gram.

(33) "Modification" means a physical change, or change in the method of operation, of an affected facility that:

(a) Increases the amount of any regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(34) "Permit Renewal" means the process by which a permit is reissued at the end of its permit term pursuant to 401 KAR Chapter 52.

(35) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a regulated air pollutant or air toxic substance given its physical and operational design where:

(a) A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation is enforceable as a practical matter; and

(b) This definition does not alter or affect the use of this term

for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(36) "Qualified receptor" means:

- (a) Private homes, condominiums, apartments, and living quarters;
- (b) Educational resources such as preschools and kindergarten through grade twelve (K-12) schools;
- (c) Daycare facilities;
- (d) Health care facilities such as hospitals or retirement and nursing homes;
- (e) Off-site worksites; and
- (f) Locations where individuals are housed in long term care hospitals, prisons, and dormitories or similar live-in housing.

(37) "Receptor" means the offsite location where a member of the public has reasonable access and any qualified receptor within the property boundary.

(38) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements in 401 KAR Chapters 50 to 65.

(39) "Regulated air pollutant" means:

- (a) Nitrogen oxides;
- (b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 U.S.C. 7409 (Section 109 of the Act);

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 U.S.C. 7671 to 7671q (Title VI of the Act);

(e) A pollutant subject to a standard promulgated pursuant to 42 U.S.C. 7411; and

(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 U.S.C. 7412.

(40) "Relocation" means the movement of a source, emissions unit, or part of an emissions unit responsible for air emissions of air toxic substances to a different physical location.

(41) "Reference concentration" or "RfC" means an estimate, with uncertainty spanning perhaps an order of magnitude, of a continuous inhalation exposure to the human population, including sensitive subgroups, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

(42) "Renewal" means the process by which a permit is reissued at the end of its permit term.

(43) "Residual risk standard" means a standard issued by the U.S. EPA pursuant to 42 U.S.C. 7412(f) to assess risks from stationary sources after implementation of technology-based MACT standards that are determined to not protect public health with an ample margin of safety.

(44) "Risk" means the probability of injury, disease, or death resulting from exposure to an air toxic substance or mixture of air toxic substances and in quantitative terms is expressed in values ranging from zero, representing the certainty that harm will not occur, to one (1) representing the certainty that harm will occur.

(45) "Risk assessment" means the scientific activity of evaluating the toxic properties of an air toxic substance and the conditions of human exposure to it through inhalation in order to ascertain the likelihood that exposed humans will be adversely affected and to characterize the nature of the effects that may be experienced and the uncertainties inherent in the assessment, that:

- (a) Is consistent with 401 KAR Chapter 64; and
- (b) As applicable, follows the most recent guidance concerning inhalation risk assessments specified in:

- 1. The U.S. EPA's Air Toxics Risk Assessment (ATRA) Library, Volumes 1, 2, and 3; or
- 2. An alternative methodology pre-approved by the cabinet, if:

- a. It is demonstrated to the satisfaction of the cabinet that the methodology is more appropriate; and
- b. The methodology is supported by peer-reviewed scientific data.

(46) "Screening risk assessment" means a Tier 1 risk assessment for a source's PTE of a TAP or ATC, which is performed with

few data and many conservative assumptions to identify exposures that should be evaluated more thoroughly for potential risk and hazard, which:

- (a) Are modeled using a reasonable worst-case scenario; and
- (b) Follows the most recent methodology concerning screening risk assessments recommended in the ATRA Library or alternative pre-approved by the cabinet.

(47) "Section 111 standard" means a new source performance standard (NSPS) required pursuant to 42 U.S.C. 7411.

(48) "Section 112 standard" means an applicable MACT, case-by-case-MACT, GACT, or residual risk standard required pursuant to 42 U.S.C. 7412.

(49) "Shutdown" means the cessation of an operation.

(50) "Significant permit revision" means a change at a source that is required to follow the procedures for a significant permit revision, initial permit, or permit renewal under 401 KAR Chapter 52, and:

(a) Involves significant changes in the monitoring requirements or a relaxation in the reporting or recordkeeping requirements contained in the permit; or

(b) Does not qualify as an administrative permit amendment or minor permit revision under 401 KAR Chapter 52.

(51) "Source" means:

(a) An activity conducted by a person that emits a regulated air pollutant; or

(b) Any building, structure, facility, installation or combination thereof that emits or is capable of emitting an air toxic substance into the atmosphere, and:

1. Is located on one (1) or more contiguous or adjacent properties;

2. Is owned or operated by the same person or by persons under common control;

3. Includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, or that support the major industrial group;

4. Includes stationary sources and portable equipment; and

5. Does not include mobile sources.

(52) "Source category" means:

(a) A source or group of sources that emit an air toxics substance due to the use of the same or similar processes, including commercial, residential, public or private processes, which as a group can reduce air toxics emissions by employing similar control or prevention strategies; or

(b) All the pollutant emitting activities that belong to the same industrial grouping (i.e., that have the same two (2) -digit code) as described in the Standard Industrial Classification Manual.

(53) "Source-wide" means all emissions units located at a source and includes emissions from all devices and processes located at the source including fugitive emissions.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65, including the emission control requirements necessary to comply with 401 KAR Chapter 64.

(55) "Start-up" means the setting in operation of an affected facility.

(56) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410, which has been approved by the U.S. EPA.

(57) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 68, which is not mandated by the Act and is not federally enforceable.

(58) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant or air toxic substance.

(59) "TAP-BACT" means an emissions limitation based on the maximum degree of reduction to be achieved for a TAP or ATC emitted from a stationary source that:

- (a) Is determined by the cabinet on a case-by-case basis to be achievable through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant after taking into account energy, environmental, health, and economic impacts and other costs;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard of 40 C.F.R. Parts 60, 61, or 63; and

(c) May be satisfied by a design, equipment, substitution or reformulation of materials, work practice or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines, pursuant to 401 KAR 64:010, Section 6, that technological or economic limitations for a particular emissions unit would make the imposition of an emissions standard infeasible;

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(60) "Tiered risk assessment" means a chronic inhalation risk assessment performed in consecutive layers or steps that:

(a) In Tier 1, begins with a reliance on conservative assumptions and little data, which result in less certain but generally conservative answers; and

(b) In Tiers 2 and 3, increasingly moves to more study-area specific data and less reliance on assumptions, which results in more realistic answers but requires increased effort and resources.

(61) "Title V program" means Kentucky's state operating permit program approved by the U.S. EPA pursuant to 42 U.S.C. 7661 to 7661f (Title V of the Act).

(62) "Toxic air pollutant" or "TAP" means a pollutant listed in 401 KAR 64:005, Sections 1 and 2 or an ATC identified by the cabinet for specific sources pursuant to 401 KAR 64:030.

(63) "tpy" means ton per year.

(64) "Unit Risk Estimate" or "URE" means the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an air toxic concentration of one (1)  $\mu\text{g}/\text{m}^3$  in air.

(65) "U.S. EPA" means the U.S. Environmental Protection Agency.

(66) "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s).

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

(a) "Air Toxics Risk Assessment Reference Library, Volume 1, Technical Resource Manual, EPA-453-K-04-001A, April 2004," as published on the Internet at [www.epa.gov/ttn/fera/risk\\_atra\\_main.html](http://www.epa.gov/ttn/fera/risk_atra_main.html);

(b) "Air Toxics Risk Assessment Reference Library, Volume 2, Facility-Specific Assessment, EPA-453-K-04-001B, April 2004," as published on the Internet at [www.epa.gov/ttn/fera/risk\\_atra\\_main.html](http://www.epa.gov/ttn/fera/risk_atra_main.html); and

(c) "Air Toxics Risk Assessment Reference Library, Volume 3, Community-Scale Assessment, EPA-452/K-06-001C, April 2006," as published on the Internet at [www.epa.gov/ttn/fera/risk\\_atra\\_main.html](http://www.epa.gov/ttn/fera/risk_atra_main.html).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 11, 2007

FILED WITH LRC: May 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held June 29, 2007 at 10 a.m. at the Transportation Cabinet Conference Center, Auditorium (C-105), 200 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. Send written notification of intent to be heard at the public hearing or written com-

ments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email [millie.ellis@ky.gov](mailto:millie.ellis@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation provides the definitions of terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 64.

(b) The necessity of this administrative regulation: The administrative regulation defines the terms used in Kentucky administrative regulations contained in 401 KAR Chapter 64.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation that have federal definitions have been clarified and simplified and have been formatted to conform to KRS Chapter 13A drafting requirements, but are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides the definitions of terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 64.

(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 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 does not directly impact any individual, business, organization, or state or local government. This administrative regulation merely defines the terms used in administrative regulations contained in 401 KAR Chapter 64.

(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 does not directly impact any individual, business, organization, or state or local government. This administrative regulation merely defines the terms used in administrative regulations contained in 401 KAR Chapter 64.

(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 does not directly impact any individual, business, organization, or state or local government. This administrative regulation merely defines the terms used in administrative regulations contained in 401 KAR Chapter 64.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not directly impact any individual, business, organization, or state or local government. This administrative regulation merely defines the terms used in administrative regulations contained in 401 KAR Chapter 64.

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

(a) Initially: There are no known initial costs for implementation

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of this administrative regulation.

(b) On a continuing basis: There are no known continuing costs related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because there are no known costs related to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The proposed administrative regulation imposes no requirements; therefore, tiering is not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. 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? None are affected by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5) authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate no new revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate no new revenue.

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

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

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)

401 KAR 64:005. Toxic air pollutants, air toxics of concern, and levels-of-concern concentrations.

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 63

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation, establishes a list of toxic air pollutants (TAPs) and establishes

level-of-concern (LOC) concentrations for these listed TAPs and procedures to determine LOCs for air toxics of concern (ATCs) identified under the Safety Net Program. There is no federal mandate for this administrative regulation.

Section 1. Carcinogenic Toxic Air Pollutants (TAPs). (1) Except as provided in Section 3 of this administrative regulation for 401 KAR 64:030, Air toxics safety net program, Table 1 in subsection (2) of this section lists:

(a) The carcinogenic toxic air pollutants (TAPs) for which a tiered risk assessment to evaluate carcinogenic risk shall be completed for each source that is subject to 401 KAR 64:010; and

(b) The corresponding UREs and screening level-of-concern (LOC) concentration for each listed TAP.

(2) Table 1. Carcinogenic TAPs.

CAS NO.	Chemical Name	URE (1/µg/m <sup>3</sup> )	LOC (µg/m <sup>3</sup> ) at 1 x 10 <sup>-6</sup>
75070	Acetaldehyde	2.20E-06	4.5E-01
60355	Acetamide	2.00E-05	5.E-02
79061	Acrylamide	1.30E-03	7.7E-04
107131	Acrylonitrile	6.80E-05	1.5E-02
107051	Allyl chloride	6.00E-06	2.E-01
62533	Aniline	1.60E-06	6.3E-01
N/A	Arsenic compounds (inorganic including arsine)	4.30E-03	2.3E-04
71432	Benzene	7.80E-06	1.3E-01
92875	Benzidine	6.70E-02	1.5E-05
98077	Benzotrichloride	3.70E-03	2.7E-04
100447	Benzyl chloride	4.90E-05	2.0E-02
N/A	Beryllium compounds	2.40E-03	4.2E-04
117817	Bis(2-ethylhexyl) phthalate	2.40E-06	4.2E-01
542881	Bis(chloromethyl)ether	6.20E-02	1.6E-05
75252	Bromofom	1.10E-06	9.1E-01
106990	1,3-Butadiene	3.00E-05	3.E-02
N/A	Cadmium compounds	1.80E-03	5.6E-04
133062	Captan	1.00E-06	1.E+00
56235	Carbon tetrachloride	1.50E-05	6.7E-02
57749	Chlordane	1.00E-04	1.E-02
510156	Chlorobenzilate	7.80E-05	1.3E-02
N/A	Chromium compounds	1.2E-02	8.3E-05
N/A	Coke oven emissions	6.20E-04	1.6E-03
96128	1,2-Dibromo-3-chloropropane	2.00E-03	5.E-04
106467	p-Dichlorobenzene	1.10E-05	9.1E-02
91941	3,3-Dichlorobenzidene	3.40E-04	2.9E-03
111444	Dichloroethyl ether	3.30E-04	3.0E-03
542756	1,3- dichloropropene	4.00E-06	3.E-01
62737	Dichlorvos	8.30E-05	1.2E-02
119904	3,3-Dimethoxybenzidine	4.00E-06	3.E-01
60117	p-Dimethylaminoazobenzene	1.30E-03	7.7E-04
119937	3,3-Dimethyl benzidine	2.60E-03	3.8E-04

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CAS NO.	Chemical Name	URE (1/μg/m <sup>3</sup> )	LOC (μg/m <sup>3</sup> ) at 1 x 10 <sup>-6</sup>
121142	2,4-Dinitrotoluene	8.90E-05	1.1E-02
123911	1,4-Dioxane	3.10E-06	3.2E-01
122667	1,2-Diphenylhydrazine	2.20E-04	4.5E-03
106898	Epichlorohydrin	1.20E-06	8.3E-01
51796	Ethyl carbamate	2.90E-04	3.4E-03
106934	Ethylene dibromide	6.00E-04	2.E-03
107062	Ethylene dichloride (1,2-dichloroethane)	2.60E-05	3.8E-02
75218	Ethylene oxide	8.80E-05	1.1E-02
96457	Ethylene thiourea	1.30E-05	7.7E-02
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.60E-06	6.3E-01
50000	Formaldehyde	5.5E-09	1.8E+02
118741	Hexachlorobenzene	4.60E-04	2.2E-03
87683	Hexachlorobutadiene	2.20E-05	4.5E-02
67721	Hexachloroethane	4.0E-06	3.E-01
302012	Hydrazine	4.90E-03	2.0E-04
78591	Isophorone	2.70E-07	3.7E+00
58899	Lindane (all isomers)	3.1E-04	3.2E-03
101144	4,4-Methylene bis(2-chloroaniline)	4.30E-04	2.3E-03
75092	Methylene chloride	4.70E-07	2.1E+00
101779	4,4'-Methylenedianiline	4.60E-04	2.2E-03
91203	Naphthalene	3.4E-05	2.9E-02
N/A	Nickel compounds	2.4E-04	2.1E-03
79469	2-Nitropropane	5.60E-06	1.8E-01
62759	Nitrosodimethylamine	1.40E-02	7.1E-05
59892	N-Nitrosomorpholine	1.90E-03	5.3E-04
82688	Pentachloronitrobenzene	7.40E-05	1.4E-02
87865	Pentachlorophenol	5.10E-06	2.0E-01
Begin Polycyclic Aromatic Hydrocarbons (PAHs)			
56553	Benzo(a)anthracene	1.1E-04	9.1E-03
205992	Benzo(b)fluoranthene	1.1E-04	9.1E-03
207089	Benzo(k)fluoranthene	1.1E-04	9.1E-03
50328	Benzo(a)pyrene	1.1E-03	9.1E-04
218019	Chrysene	1.1E-05	9.1E-02
53703	Dibenz[a,h]anthracene	1.2E-03	8.3E-04
193395	Indeno(1,2,3-cd)pyrene	1.1E-04	9.1E-03
End PAH Listings			
1336363	Polychlorinated biphenyls (PCBs)	1.00E-04	1.E-02
112074	1,3-Propane sultone	6.90E-04	1.4E-03
78875	Propylene dichloride	1.90E-05	5.3E-02
75569	Propylene oxide	3.70E-06	2.7E-01

CAS NO.	Chemical Name	URE (1/μg/m <sup>3</sup> )	LOC (μg/m <sup>3</sup> ) at 1 x 10 <sup>-6</sup>
1746016	2,3,7,8-tetrachlorodibenzo-p-dioxin	3.30E+01	3.0E-08
79345	1,1,2,2-tetrachloroethane	5.8E-05	1.7E-02
127184	Tetrachloroethene (per-chloroethylene)	5.9E-06	1.7E-01
95807	2,4-Toluene diamine	1.10E-03	9.1E-04
584849	2,4-Toluene diisocyanate	1.10E-05	9.1E-02
95534	o-Toluidine	5.10E-05	2.0E-02
8001352	Toxaphene	3.20E-04	3.1E-03
79005	1,1,2-Trichloroethane	1.60E-05	6.3E-02
79016	Trichloroethylene	2.00E-06	5.E-01
88062	2,4,6-Trichlorophenol	3.10E-06	3.2E-01
1582098	Trifluralin	2.20E-06	4.5E-01
593-60-2	Vinyl bromide	3.20E-05	3.1E-02
75-01-4	Vinyl chloride	8.80E-06	1.1E-01

Section 2. Noncancer Hazard Toxic Air Pollutants (TAPs). (1) Except as provided in Section 3 of this administrative regulation, for 401 KAR 64:030, Air toxics safety net program, Table 2 in subsection (2) of this section lists:

(a) The TAPs with identified adverse health effects and published RfCs for which a tiered risk assessment shall be completed to make a hazard identification for each source that is subject to 401 KAR 64:010; and

(b) The corresponding screening LOCs for sources that emit a single listed TAP and sources that emit multiple listed TAPs.

(2) Table 2. Noncancer Hazard TAPs.

CAS NO.	Chemical Name	RfC (mg/m <sup>3</sup> )	Noncancer Screening LOC (mg/m <sup>3</sup> ) at HQ=1.0 for sources emitting a single TAP	Noncancer Screening LOC (mg/m <sup>3</sup> ) at HQ=0.1 for sources emitting multiple TAPs
75070	Acetaldehyde	9.E-03		9.E-04
75058	Acetonitrile	6.E-02		6.E-03
107028	Acrolein	2.E-05		2.E-06
79061	Acrylamide	7.E-04		7.E-05
79107	Acrylic acid	1.E-03		1.E-04
107131	Acrylonitrile	2.E-03		2.E-04
107051	Allyl chloride	1.E-03		1.E-04
62533	Aniline	1.E-03		1.E-04
N/A	Antimony compounds	2.E-04		2.E-05
N/A	Arsenic compounds (inorganic including arsine)	5.E-05		5.E-06
71432	Benzene	3E-02		3.E-03
92875	Benzidine	1.E-02		1.E-03
N/A	Beryllium compounds	2.E-05		2.E-06
117817	Bis(2-ethylhexyl) phthalate	1.E-02		1.E-03
106990	1,3-Butadiene	2.E-03		2.E-04
N/A	Cadmium compounds	2.E-05		2.E-06
75150	Carbon disulfide	7.E-01		7.E-02
56235	Carbon tetrachloride	1.9E-01		1.9E-02

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57749	Chlordane	7.E-04	7.E-05
7782505	Chlorine	2.E-04	2.E-05
532274	2-Chloroacetophenone	3.E-05	3.E-06
108907	Chlorobenzene	1.E+00	1.E-01
67663	Chloroform	9.8E-02	9.8E-03
126998	Chloroprene	7.E-03	7.E-04
18540299	Chromium (VI) compounds	1.E-04	1.E-05
N/A	Cobalt compounds	1.E-04	1.E-05
1319773	Cresols-Cresylic acid (isomers and mixture)	6.E-01	6.E-02
98828	Cumene	4.E-01	4.E-02
N/A	Cyanide compounds	3.E-03	3.E-04
96128	1,2-Dibromo-3-chloropropane	2.E-04	2.E-05
106467	p-Dichlorobenzene	8.E-01	8.E-02
542756	1,3-dichloropropene	2.E-02	2.E-03
62737	Dichlorvos	5.E-04	5.E-05
111422	Diethanolamine	3.E-03	3.E-04
68122	Dimethyl formamide	3.E-02	3.E-03
121142	2,4-Dinitrotoluene	7.E-03	7.E-04
123911	1,4-Dioxane	3.6E-00	3.1E-01*
106898	Epichlorohydrin	1.E-03	1.E-04
106887	1,2-Epoxybutane	2.E-02	2.E-03
100414	Ethyl benzene	1.E+00	1.E-01
75003	Ethyl chloride	1.E+01	1.E+00
106934	Ethylene dibromide	9.E-03	9.E-04
107062	Ethylene dichloride (1,2-dichloroethane)	2.4E+00	2.4E-01
107211	Ethylene glycol	4.E-01	4.E-02
75218	Ethylene oxide	3.E-02	3.E-03
96457	Ethylene thiourea	3.E-03	3.E-04
50000	Formaldehyde	9.8-03	9.8-04
118741	Hexachlorobenzene	3.E-03	3.E-04
87683	Hexachlorobutadiene	9.E-02	9.E-03
77474	Hexachlorocyclopentadiene	2.E-04	2.E-05
67721	Hexachloroethane	8.E-02	8.E-03
822060	Hexamethylene-1,6-diisocyanate	1.E-05	1.E-06
110543	Hexane	2.E-01	2.E-02
302012	Hydrazine	2.E-04	2.E-05
7647010	Hydrochloric acid	2.E-02	2.E-03
7664393	Hydrofluoric acid	1.4-02	1.4-03
78591	Isophorone	2E+00	2E-01
N/A	Lead compounds	1.5E-03	1.5E-04
58899	Lindane (all isomers)	3.E-04	3.E-05
108316	Maleic anhydride	7.E-04	7.E-05
N/A	Manganese compounds	5.E-05	5.E-06
N/A	Mercury compounds	3.E-04	3.E-05
67561	Methanol	4.E+00	4.E-01
74839	Methyl bromide	5.E-03	5.E-04
74873	Methyl chloride	9.E-02	9.E-03
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.E+00	1.E-01
108101	Methyl isobutyl ketone	3.E+00	3.E-01
624839	Methyl isocyanate	1.E-03	1.E-04
80626	Methyl methacrylate	7.E-01	7.E-02
1634044	Methyl tert butyl ether	3E+00	2E-01

75092	Methylene chloride	1E+00	1E-01
101779	4,4'-Methylenedianiline <sup>2</sup>	2.E-02	2.E-03
101688	Methylene diphenyl diisocyanate	6.E-04	6.E-05
91203	Naphthalene	3.E-03	3.E-04
N/A	Nickel compounds	9.E-05	9.E-06
98953	Nitrobenzene	3.E-02	3.E-03
87865	Pentachlorophenol	1.E-01	1.E-02
108952	Phenol	2.E-01	2.E-02
75445	Phosgene	3.E-04	3.E-05
7803512	Phosphine	3.E-02	3.E-03
85449	Phthalic anhydride	2.E-02	2.E-03
78875	Propylene dichloride	4.E-03	4.E-04
75569	Propylene oxide	3.E-02	3.E-03
N/A	Selenium compounds	2.E-02	2.E-03
100425	Styrene	1.E+00	1.E-01
96093	Styrene oxide	6.E-03	6.E-04
127184	Tetrachloroethene (perchloroethylene)	2.7E-02	2.7E-03
7550450	Titanium tetrachloride	1.E-04	1.E-05
108883	Toluene	4.E-01	4.E-02
26471625	2,4/2,6-Toluene diisocyanate mixture (TDI)	7.E-05	7.E-06
120821	1,2,4-Trichlorobenzene	2.E-01	2.E-02
79005	1,1,2-Trichloroethane	4.E-01	4.E-02
79016	Trichloroethylene	6.E-01	6.E-02
121448	Triethylamine	7.E-03	7.E-04
108054	Vinyl acetate	2.E-01	2.E-02
593602	Vinyl bromide	3.E-03	3.E-04
75014	Vinyl chloride	1.E-01	1.E-02
75354	Vinylidene chloride	2.E-01	2.E-02
1330207	Xylenes (mixed)	1.E-01	1.E-02

Section 3. Air Toxics of Concern (ATCs) and LOCs for Safety Net Sources. For sources that are identified for a tiered risk assessment and possible emissions reductions under 401 KAR 64:030:

(1) The corresponding URE, RfC and LOC as listed in Sections 1 and 2 of this administrative regulation shall be used for an ATC that is also a listed TAP; and

(2) For an ATC that is not a listed TAP, the LOCs shall be calculated using the formulae specified in this subsection.

(a)  $LOC_{CARCINOGEN} = 1 \times 10^{-6} / URE$ , where:

1.  $LOC_{CARCINOGEN}$  equals the level-of-concern concentration of the ATC emitted at the source in  $\mu\text{g}/\text{m}^3$  at the MEI or MIR as appropriate; and

2. URE equals the pollutant-specific inhalation unit risk estimate, in  $(\mu\text{g}/\text{m}^3)^{-1}$ , as determined pursuant to subsection 3 of this section.

(b) To screen for the adverse health impact from a single ATC:  $LOC_{ahi} = (HQ) (RfC)$ , where:

1.  $LOC_{ahi}$  equals the level-of-concern concentration of the ATC in  $\mu\text{g}/\text{m}^3$  at the MEI or MIR as appropriate; and

2. RfC equals the pollutant-specific reference concentration, expressed as  $\text{mg}/\text{m}^3$  as determined pursuant to subsection 3 of this section.

(c) To screen for the adverse health effect from multiple ATCs:  $LOC_{ahi} = \sum [(HQ) (RfC) / 10]$ , where:

1.  $LOC_{ahi}$  equals the level-of-concern concentration of the ATC in  $\mu\text{g}/\text{m}^3$  at the MEI or MIR as appropriate; and

2. RfC equals the pollutant-specific reference concentration, expressed as  $\text{mg}/\text{m}^3$  as determined pursuant to subsection 3 of this section.

(3) For ATCs that are not listed TAPs, the UREs and RfCs shall be based on the best available information from agencies as specified and prioritized in paragraphs (a) to (d) of this subsection.

(a) The U.S. EPA's Integrated Risk Information System (IRIS), available on the internet at [www.epa.gov/iris/subst/index.html](http://www.epa.gov/iris/subst/index.html);

(b) Agency for Toxic Substances and Disease Registry (ATSDR), available on the internet at <http://www.atsdr.cdc.gov/toxfaq.html>;

(c) California Environmental Protection Agency (CalEPA), available on the internet at [www.oehha.ca.gov/air/hot\\_spots/index.html](http://www.oehha.ca.gov/air/hot_spots/index.html); and

(d) If a value does not exist on IRIS or from ATSDR or CalEPA, a value based on information available to the cabinet reviewed and approved on a case-by-case basis.

Section 4. New and Revised TAPs and LOCs. (1) The cabinet shall review the listed TAPs and corresponding UREs, RfCs, and LOCs at least every five (5) years and shall propose revisions as necessary.

(2) The cabinet shall establish new or revised TAPs, UREs, RfCs, and LOCs, based on:

(a) Modeling, monitoring, and emissions inventory data;

(b) The most current UREs and RfCs recommended by the U.S. EPA Office of Air and Radiation;

(c) The best available information from other states, local air authorities, or other credible sources, if U.S. EPA UREs or RfCs are not available; and

(d) The following criteria:

1. Toxicity or potency of the air toxic substance;

2. Exposure and number of people at risk;

3. Impact on sensitive human populations;

4. The number and degree of predicted exceedances of an LOC; and

5. Potential to cause harm through persistence and bioaccumulation.

TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 11, 2007

FILED WITH LRC: May 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held June 29, 2007 at 10 a.m. at the Transportation Cabinet Conference Center, Auditorium (C-105), 200 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email [millie.ellis@ky.gov](mailto:millie.ellis@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes levels-of-concern (LOCs) for 77 carcinogenic toxics air pollutants (TAPs) listed in Table 1 and 98 non-carcinogenic TAPs listed in Table 2. 46 TAPs are listed in both tables, so that there are a total of 129 listed TAPs. The listed TAPs are a sub-set of the 188 hazardous air pollutants (HAPs)

listed in 42 U.S.C. 7412(b) (Title III of the 1990 Clean Air Act Amendments). The listed TAPs addressed by this administrative regulation mirror the HAPs currently identified in the U.S. EPA's 1999 National Air Toxics Assessment (NATA) for which the U.S. EPA has determined prioritized dose response values. In the proposed administrative regulation, the cabinet has listed the inhalation unit risk estimates (UREs) and reference concentrations (RfCs) for which estimated health effects have been quantified for the inhalation route of exposure specific to each listed TAP. The source of these dose-response values is the U.S. EPA Office of Air Quality Planning and Standards (OAQPS) Prioritized Chronic Dose Response Values (PDRV) Table 1, which is available on the internet at [www.epa.gov/ttn/atw/toxsource/table1.pdf](http://www.epa.gov/ttn/atw/toxsource/table1.pdf). Since the listed TAPs are a small subset of the universe of toxic air contaminants, the proposed administrative regulation also includes a procedure for determining the URE and RfC for air toxics of concern (ATCs) identified under 401 KAR 64:030, Air toxics safety net program.

(b) The necessity of this administrative regulation: The proposed administrative regulation lists the TAPS and their corresponding unit risk estimates and reference concentrations, which the cabinet will use in assessing the risks of cancer and other adverse health effects caused by a source's air toxics emissions and to require emissions reductions by the source if the risks are determined to be unacceptable. The proposed administrative regulation also includes a procedure for determining the URE and RfC for an air toxic identified under 401 KAR 64:030, Air toxics safety net program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: While this administrative regulation is not federally mandated, the cabinet does have a state mandate under KRS 224.10-100 to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation meets the statutory mandate by allowing the cabinet to assess the risks that air toxics sources cause to the public and to require emissions reductions if the risks are determined to be unacceptable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed administrative regulation will assist the cabinet in the control of air toxic pollution by providing a clearly articulated and objective method for evaluating a source's air toxic emissions. The LOCs that are proposed in this administrative regulation will serve as general indicators of air quality and the potential risk to public health. The comparison of predicted or monitored ambient concentrations to LOCs cannot be used to predict the likelihood of a particular cancer or noncancer effect, since exposure to chemicals above an LOC does not automatically mean that the individual will develop cancer or a noncancer effect. The duration of the exposure, exposure level, and sensitivity of the individual are all factors in the development of these conditions; however, the risk of developing cancer increases with the frequency and severity of exposure. The proposed LOCs are health-based ambient air toxic levels that the cabinet intends to use in permitting stationary sources, which are based on potential, known, or suspected carcinogenic and toxic health properties of individual compounds. For cancer risk estimates, the proposed LOCs denote the concentration of a carcinogen associated with a one-in-one million ( $1 \times 10^{-6}$ ) excess cancer risk over a lifetime of exposure. For noncancer LOCs, the concentration represents the value likely to present no appreciable risk of adverse noncancer effects with long-term continuous inhalation.

(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 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. Toxic air pollutants can be emitted from many types



of sources, including large manufacturing facilities such as chemical production plants; combustion facilities such as utilities and waste incinerators; small commercial operations such as dry cleaners; and on-road and nonroad mobile sources such as automobiles, lawnmowers, and jet skis. New and existing air toxic sources and modifications at stationary sources, which are required to be permitted under 401 KAR Chapter 52, would be subject to the proposed administrative regulation. These sources are required to evaluate the emissions of the listed TAPs to determine whether the individual source may cause the exceedance of an LOC concentration and ultimately whether the source is responsible for causing an unacceptable risk to the public health. A source that is responsible for such a risk impact will be required to reduce the risk. There are currently approximately 380 major sources, 210 conditional major sources, and 1,450 minor sources located in Kentucky, which are permitted under 401 KAR Chapter 52. These sources and any newly-constructing sources are potentially subject to this administrative regulation. Concerning local government impacts, the air toxics regulations of the Louisville Metro Air Pollution Control District will be reviewed by the cabinet for relative stringency. That review will be conducted on an holistic, rather than a provision-by-provision, basis and no impact on the local government's program is anticipated 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: The above-referenced group of sources will be required to evaluate their emissions of listed TAPs to determine whether the impact from the source's emissions causes TAP concentrations that are above an LOC listed in 401 KAR 64:005. If the source's emissions are responsible for a TAP concentration that is above an LOC, the source will be required to evaluate the public health risk impact. If the source causes an unacceptable risk, the source will be required to reduce that risk. For air toxic emissions at sources identified under 401 KAR 64:030, Air toxics safety net program, the cabinet will conduct preliminary risk screening and any resultant health based risk assessment that is deemed necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs of conducting a health based risk assessment vary greatly depending upon the source size and characteristics; therefore, it is not possible to accurately quantify these costs. The proposed air toxics program does provide the option for minor sources to request that the cabinet perform any required tiered risk assessment. The TAP-BACT requirement, for those sources that are required to reduce the health risk their emissions are determined to be causing, includes economic impact considerations. For safety net sources that are required to reduce the risk caused by their air toxic emissions, the cost will vary greatly depending upon the source size and characteristics; therefore, it is not possible to accurately quantify these costs. The TAP-BACT requirement for these sources also includes economic impact considerations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Unacceptable health risks caused by the sources' air toxics emissions will be reduced to acceptable levels. In addition compliance determinations will be made clear and consistent for regulated entities.

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

(a) Initially: Costs are included in the Division for Air Quality's normal day-to-day operating budget.

(b) On a continuing basis: Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has been included in the Division for Air Quality's operating budget.

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

fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not applicable to the provisions of this administrative regulation.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. 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 has the potential to affect any unit, part or division of state or local government operating an emissions unit that meets the applicability determination of Section 1 of this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5) authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate no new revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate no new revenue.

(c) How much will it cost to administer this program for the first year? Costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.  
Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

#### 401 KAR 64:010. General provisions for air toxics sources.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 63

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for the emissions of toxic air pollutants (TAPs) and other air toxics of concern (ATCs) identified under Kentucky's safety net program to be evaluated to determine if those emissions have toxic impacts on air quality, which may include cancer or chronic noncancer adverse health effects. There is no federal mandate for this administrative regulation.

Section 1. Applicability. (1) Except as provided in subsection

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(2) of this section, this administrative regulation shall apply to new, existing, modifying, and relocating sources:

(a) That emit or have the potential to emit a toxic air pollutant (TAP) listed in 401 KAR 64:005, Sections 1 or 2, and are required to have a permit, significant permit revision, or permit renewal under 401 KAR 52:020, 52:030, or 52:040; or

(b) That emit an air toxic of concern (ATC) and are identified by the cabinet for coverage under 401 KAR 64:030, Air toxics safety net program.

(2) Unless the cabinet determines that the air toxic emissions shall be evaluated pursuant to 401 KAR 64:030:

(a) De minimis emissions shall not be subject to this administrative regulation; and

(b) An emissions unit shall not be subject to this administrative regulation if:

1. The unit is an affected source pursuant to a Section 112 standard for a hazardous air pollutant (HAP) listed pursuant to 42 U.S.C. 7412(b), or the U.S. EPA evaluation for the standard specifically addresses the affected source or the emissions of such an affected source;

2. The unit is an electric utility steam generating unit that has been delisted from 42 U.S.C. 7412(c) under a finding made pursuant to 42 U.S.C. 7412(n)(1)(A);

3. The unit's air toxic emissions are incidentally controlled by a standard at a level that is determined by the cabinet to be comparable to TAP-BACT, if the standard is enforceable as a practical matter; or

4. The unit is located at a source permitted pursuant to 401 KAR 52:030 or 52:040, and the source requests and accepts conditions, which are made enforceable as a practical matter, to comply with the Section 112 standard for the corresponding source category.

Section 2. General Provisions. (1) The source-wide potential to emit (PTE) for each TAP emitted by a source that is subject to this administrative regulation shall be evaluated under a tiered risk assessment as provided in the U.S. EPA's Air Toxic Risk Assessment Library and 401 KAR Chapter 64, as appropriate.

(a) If a screening, or Tier 1, risk assessment demonstrates that the source's PTE for a TAP results in an air concentration that is above the corresponding level-of-concern (LOC) pursuant to 401 KAR 64:005, the risk assessment shall be continued with a Tier 2 or Tier 3 assessment, as appropriate, for all TAPs with a concentration that is above an LOC to more precisely estimate the source-wide risk level and hazard index (HI);

(b) If the Tier 2 or Tier 3 assessment demonstrates that the source-wide TAP emissions result in a cancer risk estimate that is greater than one-in-one million ( $1 \times 10^{-6}$ ) or a hazard Index (HI) that is above one and zero-tenths (1.0), the source shall apply TAP-BACT pursuant to Section 3 of this administrative regulation and reduce emissions, if applicable; and

(c) The risk assessment may proceed to a higher or intermediate level tier at any point during the assessment.

(2) A method for estimating risk that is an alternative to the U.S. EPA's Air Toxic Risk Assessment Library may be used if the method is pre-approved by the cabinet.

(3) The tiered risk assessment shall be based on information provided in a current permit application submitted pursuant to 401 KAR 52:020, 52:030, or 52:040, as applicable

(4) The cabinet shall review the permit application on a case-by-case basis.

(5) A source may revise the permit application so that the source's PTE does not exceed an LOC pursuant to 401 KAR 64:005. If the permit application is revised, the application:

(a) May include a reduction in TAP emissions, an increase in good engineering practice (GEP) stack height, or a reduction in operating hours; and

(b) Conditions shall be included in the permit and made enforceable as a practical matter.

(6) If the permit application is not revised pursuant to subsection (5) of this section, the source shall be subject to the tiered risk assessment process.

(7) Sources that are subject to this administrative regulation shall comply with all applicable state-origin and federally enforce-

able requirements and shall demonstrate compliance if so requested by the cabinet.

Section 3. TAP-BACT Determination. (1) A source that is required to comply with a case-by-case TAP-BACT determination pursuant to Section 2(1) of this administrative regulation:

(a) For cancer risk:

1. Shall apply TAP-BACT, if the source-wide risk estimate is greater than one-in-one million ( $1 \times 10^{-6}$ ) but less than or equal to one-in-ten thousand ( $1 \times 10^{-4}$ ); and

2. Shall reduce emissions so that the cancer risk estimate is less than approximately one-in-ten thousand ( $1 \times 10^{-4}$ ) and then apply TAP-BACT, if the risk estimate is greater than one-in-ten thousand ( $1 \times 10^{-4}$ ); and

(b) For noncancer hazard:

1. Shall apply TAP-BACT, if the source-wide hazard index (HI) is greater than one and zero-tenths (1.0) and less than or equal to ten and zero-tenths (10.0); and

2. Shall reduce emissions so that the HI is less than ten and zero-tenths (10.0) and then apply TAP-BACT, if the HI is greater than ten and zero-tenths (10.0).

(2) Tier 2 and Tier 3 of the risk assessment may identify the specific emissions units and TAPs that drive the exposure and risk in order to identify the TAP-BACT that will result in the most appropriate risk reduction.

(3) For a TAP-BACT determination made pursuant to this administrative regulation, the source shall apply for and receive a permit, permit revision, or permit renewal pursuant to 401 KAR Chapters 52 and 64, as applicable, if the source:

(a) Voluntarily applies TAP-BACT;

(b) Is required to apply TAP-BACT; or

(c) Is required to reduce emissions and apply TAP-BACT.

Section 4. Compliance Timetable. (1) New and Modifying Sources. After the effective date of this administrative regulation, a new source that constructs or an existing source that requires a significant permit revision shall, prior to commencing construction, complete a source-wide tiered risk assessment for the source's potential TAP emissions, and:

(a) Shall apply for and receive a permit or permit revision pursuant to this administrative regulation, if the source:

1. Voluntarily accepts conditions to avoid the applicability of this administrative regulation; or

2. Is required to install, maintain, and operate in compliance with a TAP-BACT determination; and

(b) Shall comply with permit conditions established pursuant to this administrative regulation upon commencing operation.

(2) Existing Sources Subject to a Section 111 or 112 Standard. For an existing source that is subject to a Section 111 or 112 standard:

(a) If the source is required to submit a permit application to comply with the Section 111 or 112 standard after the effective date of this administrative regulation, the source shall submit a permit application to comply with the provisions of this administrative regulation, as applicable, according to the deadlines required by the Section 111 or 112 standard.

(b) If the source is required to submit a permit application for the Section 111 or 112 standard before the effective date of this administrative regulation:

1. The source shall submit an application, as applicable, to comply with this administrative regulation at the source's next significant permit revision or scheduled permit renewal, whichever comes first; and

2. If a permit revision is required to comply with this administrative regulation, the source shall comply with the permit conditions as soon as practicable but not later than three (3) years from the date the significant permit revision or permit renewal becomes final.

(3) Existing Sources Not Subject to a Section 111 or 112 Standard. For an existing source that is not subject to a Section 111 or 112 standard, the source:

(a) Shall be subject to the requirements of a tiered risk assessment at the source's next significant permit revision or scheduled permit renewal, whichever comes first;

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(b) Shall submit a permit application to comply with this administrative regulation, if necessary; and

(c) Shall comply with the permit conditions as soon as practicable but not later than three (3) years from the date the permit revision or renewal becomes final.

(4) A source may apply for a permit to emit a TAP any time before an application is required.

Section 5. Compliance Demonstration. (1) Sources shall submit documentation of compliance with this administrative regulation with the applicable permit application, including:

(a) A list identifying the concentration for each TAP that is or will be emitted;

(b) An estimate of the average annual emissions rates based on each emission unit's potential to emit; and

(c) The distances to and the concentrations at the nearest receptors; and

(d) At least one (1) of the following:

1. Results of an air quality modeling analysis;

2. Results of a tiered risk assessment; or

3. Calculations, results, or analyses from an alternative method of compliance demonstration approved by the cabinet in advance.

(2) If the cabinet revises an LOC concentration in 401 KAR 64:005:

(a) Existing permit conditions shall not be required to be revised until a significant permit revision or permit renewal, whichever comes first;

(b) At the time of the significant permit revision or permit renewal, the source shall complete a tiered risk assessment for the source-wide TAP potential emissions including use of the new LOC concentration; and

(c) If additional time is needed to bring the source into compliance:

1. A compliance schedule shall be included in the source's permit; and

2. Final compliance shall be as soon as practicable but not later than three (3) years from the date the significant permit revision or permit renewal becomes final.

(3) After a source demonstrates compliance with this administrative regulation, unless the source modifies or relocates, future tiered risk assessments and demonstrations shall only be required at permit renewal:

(a) On a five (5) year basis for sources permitted under 401 KAR 52:020 or 52:030; and

(b) On a ten (10) year basis for sources permitted under 401 KAR 52:040.

Section 6. Public Notice and Opportunity for Public Hearing. The cabinet shall approve or disapprove permits, permit revisions, or permit renewals involving a TAP-BACT demonstration after a public notice with an opportunity for a public hearing pursuant to 401 KAR 52:100 or 64:050, as applicable.

TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 11, 2007

FILED WITH LRC: May 14, 2007 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held June 29, 2007 at 10 a.m. at the Transportation Cabinet Conference Center, Auditorium (C-105), 200 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be

made to the contact person at least 5 workdays prior to the hearing.

**CONTACT PERSON:** Millie Ellis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email millie.ellis@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for sources that emit toxic air pollutants (TAPs) to evaluate whether those emissions have toxic impacts on air quality. The TAPs to be regulated by this administrative regulation are generally air pollutants known or suspected to cause serious health problems such as cancer or chronic noncancer adverse health effects. The U.S. EPA regulates 188 air toxics, which are known as hazardous air pollutants (HAPs), under the Clean Air Act of 42 U.S.C. 7412. This administrative regulation proposes that sources of the TAPs listed in 401 KAR 64:005, or identified by the cabinet under 401 KAR 64:030, be evaluated for risk. These TAPs comprise a subset of the 188 HAPs listed in the Clean Air Act at 42 U.S.C. 7412(b). Studies show air toxics at levels of concern not only near large facilities, but also in areas where releases from many small sources all contribute to pollution in the air we breathe; therefore, in addition to considering the expected pollution from large manufacturing facilities, this administrative regulation will look at air toxics being released by a variety of small sources. Though mobile and indoor air sources certainly contribute to the total toxic air pollution load, the cabinet does not propose at this time to regulate these sources beyond the federal standards. The screening level or Tier 1 assessment uses simplifying assumptions and conservative inputs to identify, for no further action or analysis, air toxic emissions for which risks are unlikely to be of concern. The screening tier is designed to be relatively simple, inexpensive, and quick, using existing data, defined decision criteria, and models with simplifying conservative assumptions and inputs. Tiers 2 and 3 of the assessment include refinements that are thought to influence risk most or that may contain the greatest uncertainty. While Tiers 2 and 3 require more effort and expense than Tier 1, they produce results that are less uncertain and less conservative and thus are less likely to overestimate risk.

(b) The necessity of this administrative regulation: The cabinet considers the protection of public health from the effects of environmental pollutants to be a matter of highest priority. The Environmental and Public Protection Cabinet plans to enhance its capability to evaluate risks to public health and to review each of the programs that it administers to determine whether additional or different regulatory requirements would more appropriately reflect the actions necessary to protect the public health. The cabinet's initial review of the programs administered by its Division for Air Quality indicated that additional measures were necessary to ensure protection of public health from the effects of ambient levels of toxic air pollutants. In the late 1990s the division conducted a study of the effectiveness of its administrative regulations to control the emission of toxic and hazardous air pollutants and concluded that administration of the regulations had consumed significant public and private resources but had little or no impact on the emission of toxic and hazardous air pollutants. Based upon the U. S. EPA's impending promulgation of technology-based Maximum Achievable Control Technology (MACT) standards and regulations to address the residual risk to public health, the division repealed administrative regulation 401 KAR 63:022 and substantially amended administrative regulation 401 KAR 63:021. The U. S. EPA has encountered significant delays in the issuance of its technology-based MACT standards and has made very limited progress in the development of regulations to protect the public health from the residual risk posed by ambient levels of hazardous air pollutants after compliance with MACT standards; therefore, the cabinet has determined that the public interest would be served by the development of a state regulatory program that identifies ambient levels of toxic air pollutants that are consistent with protection of health-related values and establishes clear-cut implementation procedures. In

order to accomplish this objective, in August 2004, the cabinet established a workgroup comprised of 10 individuals who possess scientific knowledge and expertise in the fields of toxicology, environmental protection and risk assessment to assist in the formulation of the regulatory program. Several meetings of the workgroup, open to the public, have been held over the last 2 years. In all, nearly 70 different stakeholders have been involved in the development of the program. The proposed state air toxics program fills in areas of specific need, rather than establishing a whole new program. Strict adherence has been given to basing the proposed administrative regulations on good science and relevant information essential for air toxics program development.

(c) How this administrative regulation conforms to the content of the authorizing statutes: While this administrative regulation is not federally mandated, the cabinet does have a state mandate under KRS 224.10-100 to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation meets the statutory mandate by allowing the cabinet to assess the risks that air toxics sources cause to the public and to require emissions reductions if the risks are determined to be unacceptable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed administrative regulation will assist the cabinet in the control of air toxic pollution by providing a clearly articulated and objective method for evaluating the air toxic emissions of sources. The key functions of the proposed program are to: increase data collection capabilities related to toxic air pollutants and their effects; streamline the way industrial sources are evaluated under the current state air toxics provisions of 401 KAR 63:020 while maintaining air quality gains and reduce resources used to address nuisances; and increase the scientific underpinnings of our air toxic program including our ability to consistently measure, analyze, and evaluate toxic air pollution and its effects.

(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 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. Toxic air pollutants can be emitted from many types of sources, including large manufacturing facilities such as chemical production plants; combustion facilities such as utilities and waste incinerators; small commercial operations such as dry cleaners; and on-road and nonroad mobile sources such as automobiles, lawnmowers, and jet skis. New and existing air toxic sources and modifications at stationary sources, which are required to apply for permits, permit renewals, and significant permit revisions under 401 KAR Chapter 52, would be subject to the proposed administrative regulation. These sources are required to evaluate their TAP emissions to determine whether the individual source may cause the exceedance of a level-of-concern (LOC) concentration and ultimately whether the source is responsible for causing an unacceptable risk to the public health. A source that is responsible for such a risk impact will be required to reduce that risk. There are currently approximately 380 major sources, 210 conditional major sources, and 1,450 minor sources located in Kentucky, which are permitted under 401 KAR Chapter 52. These sources and any newly-constructing sources are potentially subject to this administrative regulation. Concerning local government impacts, the air toxics regulations of the Louisville Metro Air Pollution Control District will be reviewed by the cabinet for relative stringency. That review will be conducted on a holistic, rather than provision-by-provision, basis and no impact on the local government's program is anticipated 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: The above-referenced group of sources will be required to evaluate their TAP emissions to determine whether the impact from the source's emissions causes the concentration of TAPs in the ambient air that is above a level of concern. If the source's emissions are responsible for a TAP concentration that is above an LOC, the source will be required to evaluate the public health risk impact of its TAP emissions. If the source causes an unacceptable risk, the source will be required to reduce that risk.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs of conducting a health based risk assessment vary greatly depending upon the source size and characteristics; therefore, it is not possible to accurately quantify these costs. The proposed air toxics program does provide the option for minor sources to request that the cabinet perform any required tiered risk assessment. The TAP-BACT requirement, for those sources that are required to reduce the health risk their emissions are determined to be causing, includes economic impact considerations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance determinations will be made clear and consistent for regulated entities.

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

(a) Initially: Costs are included in the Division for Air Quality's normal day-to-day operating budget.

(b) On a continuing basis: Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has been included in the Division for Air Quality's operating budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The proposed administrative regulation focuses the imposition of control equipment or techniques to those sources that significantly contribute to risk (including noncarcinogenic effects) while avoiding imposition of TAP-BACT on sources that have little effect on risk. Tiering is applied throughout the provisions of this administrative regulation as follows:

1. Sources that are not required to be permitted under 401 KAR Chapter 52, which are in specific source categories, are exempt;

2. Nonexempt sources will proceed through an air toxic screening evaluation with look-up tables and approved inhalation screening models;

3. Refined modeling and/or a Tier 2 or 3 risk assessment is required for sources that do not screen out;

4. Sources with risk below  $10^{-6}$  and/or HI less than or equal to 1.0 will exit the program;

5. Sources with risk greater than  $10^{-6}$  and/or HI greater than 1.0 are subject to TAP-BACT; and

6. Sources with risk at or above  $10^{-4}$  and/or HI greater than 10.0 must reduce their emissions below  $10^{-4}$  and HI of 10.0 and are subject to TAP-BACT.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. 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 has the potential to affect any unit, part, or division of state or local government operating an emissions unit that meets the applicability determination of Section 1 of this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.

KRS 224.10-100(5) authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate no new revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate no new revenue.

(c) How much will it cost to administer this program for the first year? Costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department for Environmental Protection**  
**Division for Air Quality**  
**(New Administrative Regulation)**

**401 KAR 64:020. Risk assessment.**

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 63

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation contains provisions for determining risk and hazard associated with air toxic emissions. There is no federal mandate for this administrative regulation.

Section 1. Applicability. (1) This administrative regulation shall apply to sources that are subject to a tiered risk assessment pursuant to 401 KAR 64:010 or 64:030 to evaluate cancer risk and noncancer hazard.

Section 2. The Tiered Risk Assessment. (1) The tiered risk assessment shall be:

(a) Conducted by the source, if the source is required to be permitted under 401 KAR 52:020 or 52:030; and

(b) Conducted by the cabinet:

1. Upon the source's request, if the source is required to be permitted under 401 KAR 52:040; and

2. For all sources identified for coverage under 401 KAR 64:030.

(2) In a screening, or Tier 1, risk assessment, the concentration of each toxic air pollutant (TAP) emitted at the source shall be compared with the corresponding level-of-concern (LOC) as provided in 401 KAR 64:005, where:

(a) Generalized worst-case assumptions to evaluate cancer

risk and noncancer hazard from inhalation shall be used; and

(b) Nomographs or a U.S. EPA approved model such as SCREEN3 to estimate dispersion and dilution of emitted TAPs and resulting concentrations may be used.

(3) A tiered risk assessment may be performed at the lowest level tier, which demonstrates to the satisfaction of the cabinet that the source's TAP emissions shall not result in an unacceptable risk or hazard.

(4) Intermediate-level tiers may be added to the assessment, which incorporate some features of higher- and lower-level tiers.

(5) For a Tier 2 risk assessment, the risks for all carcinogenic TAPs present in a concentration that is above an LOC shall be summed to determine the source-wide cancer risk and hazard index (HI) posed by the source.

(6) For Tier 2 and Tier 3 assessments, the application of human exposure models and other advanced risk modeling approaches may be used.

(7) For good cause, the cabinet may:

(a) Require the source-wide risk level or hazard to be evaluated at the point of maximum impact, for sources that are required to be permitted under 401 KAR 52:020 or 52:030; and

(b) Evaluate the source-wide risk level or hazard at the point of maximum impact, for sources that are required to be permitted under 401 KAR 52:040.

Section 3. Calculating Cancer Risk. (1) The estimated cancer risk associated with the emissions of each carcinogenic TAP shall be calculated using the following formula:

$Risk = \sum \{(C_{CARCINOGEN}) (URE)\}$ , where:

(a)  $C_{CARCINOGEN}$  equals the annual average concentration of the TAP in  $\mu\text{g}/\text{m}^3$  at the MEI or MIR as appropriate; and

(b) URE equals the pollutant-specific inhalation unit risk estimate, in  $(\mu\text{g}/\text{m}^3)^{-1}$ , as specified in 401 KAR 64:005.

(2) The cancer risk estimate shall be considered:

(a) Negligible if less than or equal to one-in-one million ( $1 \times 10^{-6}$ ); and

(b) Above an LOC if greater than one-in-one million ( $1 \times 10^{-6}$ ).

(3) For good cause, the cabinet may allow, on a case-by-case basis, a cancer risk level greater than one-in-one million ( $1 \times 10^{-6}$ ), which shall include a tiered risk assessment and adequate documentation for allowing a risk level that is above one-in-one million ( $1 \times 10^{-6}$ ).

(4) The cabinet shall not allow a cancer risk level greater than one-in-ten thousand ( $1 \times 10^{-4}$ ).

Section 4. Calculating Chronic Hazard Index (HI). (1) The hazard quotient (HQ) associated with emitting a noncarcinogen or a carcinogen with an RfC shall be calculated by the following formula:  $HQ = C / RfC$ , where:

(a) C equals the annual average concentration of the air toxic substance in  $\mu\text{g}/\text{m}^3$  at the MEI or MIR as appropriate; and

(b) RfC equals the pollutant-specific reference concentration, expressed as  $\text{mg}/\text{m}^3$  as provided in 401 KAR 64:005, Section 2.

(2) The HI associated with emitting multiple air toxic substances shall be calculated by the following formula:

$HI = \sum (C / RfC)$ , where the HI is:

(a) Negligible if less than or equal to one and zero-tenths (1.0); and

(b) Above an LOC if greater than one and zero-tenths (1.0).

(3) For good cause, the cabinet may, on a case-by-case basis, allow a chronic HI value of greater than one and zero-tenths (1.0), which shall include a tiered risk assessment and adequate documentation for allowing a chronic HI value of greater than one and zero-tenths (1.0).

(4) The cabinet shall not allow a chronic HI value of greater than ten and zero-tenths (10.0).

Section 5. Risk Assessment Plan. (1) Before a Tier 2 or Tier 3 risk assessment document is developed, a plan that contains a description and discussion of the analytical methodology that will be used to develop the risk assessment document:

(a) Shall be submitted to the Division for Air Quality, Permit Review Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601 for sources permitted under 401 KAR 52:020 and 52:030;

(b) Shall be provided to the source by the Division for Air Quality for sources, which request the cabinet to evaluate the source's TAP emissions, and which are permitted under 401 KAR 52:040 or identified for a tiered risk assessment under 401 KAR 64:030; and

(c) If the division or the source, as applicable, does not comment on the plan within sixty (60) days after receipt, the plan shall be deemed administratively complete.

(2) The risk assessment plan shall follow the procedures outlined in:

(a) The U.S. EPA "Air Toxics Risk Assessment Reference Library"; or

(b) An alternative procedure proposed by the source and pre-approved by the cabinet.

(3) The risk assessment plan shall be organized as follows:

(a) Background and purpose of the risk assessment.

(b) A table listing the identity, location, and the potential to emit of each TAP, in tons per year, for all emission units located at the source:

1. That are subject to the risk assessment requirements of this administrative regulation; and

2. That emit listed TAPs but which are not to be included in the risk assessment, along with an explanation of why these units are being excluded.

(c) Exposure assessment. For the emission units and TAP emissions subject to the risk assessment process, a description of the analytical approach that will be used to determine the location, magnitude, frequency, and duration of human inhalation exposure to off-site receptors at the MEI or MIR, as appropriate, shall be presented as follows:

1. Conceptual model. For the emission units and TAP emissions subject to the tiered risk assessment requirements, a conceptual model shall be developed that illustrates how potential risks to off-site receptors may occur and shall include both a written description and a general illustration of the relationship among:

a. The emission units and TAP emissions subject to the tiered risk assessment;

b. The potential fate and transport of TAP emissions from the source through ambient air to off-site receptors;

c. The off-site human populations potentially exposed to the TAPs beyond the source boundary through the inhalation route of exposure;

d. The adverse chronic health effects that may result from inhalation of the emitted TAPs, such as cancer, respiratory effects, birth defects, and reproductive and neurological disorders; and

e. An indication if either cancer risk or non cancer hazard will be evaluated and reported through the risk assessment process.

2. Pursuant to the provisions of Section 6 of this administrative regulation, a description of the air quality modeling methodology that will be used to evaluate the annual average concentration of the TAPs, in  $\mu\text{g}/\text{m}^3$ , at off-site receptors; and

3. For Tier 3 assessments, procedures for the application of a human exposure model or other advanced exposure assessment approach.

(d) Toxicity assessment. The plan shall discuss the process for identifying or developing acceptable dose-response values for use in the risk assessment pursuant to 401 KAR 64:005.

(e) Risk Characterization. The plan shall describe the procedures that will be used to calculate and present public health risk and hazard identification from inhalation exposures to TAPs based on the information developed in the exposure and toxicity assessments, and shall include a discussion of the uncertainties inherent in the evaluation, where:

1. Estimates of chemical-specific and total risk and hazard, including target organ-specific hazard indices, shall be presented in table format by receptor; and

2. The uncertainty discussion shall evaluate major uncertainties associated with each element of the risk assessment, including those associated with the exposure assessment, the toxicity assessment, and the risk characterization, including the impact of the uncertainties and major assumptions that were made, and shall discuss the implications of variability in exposure and toxicity on risk estimates.

(f) A description of the data quality for the assessment as well as a discussion of the quality assurance and quality control proce-

dures that will be implemented for each element of the assessment to ensure that risk evaluation and hazard identification will be of sufficient quality to support decision-making.

(g) A list of personnel responsible for performing each element of the risk assessment, a list of project management along with their roles and responsibilities, and a central point of contact for the assessment.

(h) A schedule for performing and submitting the risk assessment document.

(i) An outline for the risk assessment document to be developed, including a brief description of each of the major sections of the document.

(j) A list of references to all materials cited in the draft risk assessment plan.

Section 6. Air Quality Modeling Demonstration. Tier 2 and Tier 3 risk assessments shall include air quality modeling to provide estimates of maximum average air concentrations at the receptors.

(1) The source shall, as part of the exposure assessment section of the risk assessment plan as required in Section 5(3)(c)2 of this administrative regulation:

(a) Submit a proposed modeling protocol to the cabinet which documents in detail how the applicant proposes to execute the modeling analysis and present the results, and

(b) Use models recommended in the most recent version of the U.S. EPA modeling procedures, as outlined in "Guideline on Air Quality Models," Document Number EPA 450/2-78-027R or use an equivalent modeling protocol pre-approved by the cabinet.

(2) The following information shall be included in the modeling protocol:

(a) Air quality modeling project description and overview;

(b) Site characteristics, including a land use analysis of the surrounding area and information about local demographics (race, ethnicity, economic status, etc.) and potentially sensitive subgroups (e.g., elderly, children); a description of the local topography; and the meteorological data proposed for use in the modeling analysis;

(c) A detailed plot plan drawn to scale that includes:

1. The location of all proposed emission units subject to this assessment, all buildings and structures on-site, and the source property line;

2. The location of off-site buildings, structures, publicly accessible areas such as parks, and other receptors which may be adversely impacted by the source's air toxic emissions;

3. The physical dimensions of all buildings, structures, and other publicly accessible areas identified in paragraph (c)1 and 2 of this subsection; and

4. An indication of true north;

(d) The methodology for developing emissions characteristics for TAP releases from sources subject to 401 KAR Chapter 64, such as Good Engineering Practice (GEP) stack height analysis, engineering estimates of release rates, the use of data from similar sources, or source-specific data, including routine monitoring, performance tests, and compliance tests;

(e) A proposed air quality modeling method that includes:

1. The selection of an air quality model and justification for use; and

2. The proposed methods for modeling;

(f) The proposed method for presenting air quality modeling results, including how annual average air concentrations will be identified for receptors at the MEI or MIR, as appropriate; and

(g) Major calculations that will be used in the modeling analysis along with supporting information.

(3) Sources that are separate corporate entities shall not be required to consider the other source's emissions in its modeling analyses.

(4) The cabinet may do a combined impact analysis for sources under 401 KAR 64:030, Air toxics safety net program, to ensure that the combined impacts do not adversely affect human health.

(5) The provisions of this section shall not alter the definition of source.

TERESA J. HILL, Secretary



APPROVED BY AGENCY: May 11, 2007

FILED WITH LRC: May 14, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held June 29, 2007 at 10 a.m. at the Transportation Cabinet Conference Center, Auditorium (C-105), 200 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least 5 workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email millie.ellis@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis, Environmental Technologist III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for conducting a tiered risk assessment. The risk assessment process provides the information necessary to determine whether the emissions released into the air by the operation of a source will cause an unacceptable risk to the local population. In the risk assessment, the toxicity and potential health effects from the chemicals that come out of the source's stack are considered (toxicity assessment). The risk assessment also considers where the chemicals go and how humans might be exposed to them (exposure assessment). Then the potential health risk is calculated using this information. The Tier 1 risk assessment proposed in this administrative regulation is a screening process that is designed to minimize the likelihood of incorrectly exempting or permitting sources that pose a significant health risk. It is designed to overestimate the risk for most sources. This ensures that any source that needs closer scrutiny will be identified. Because the procedure is quick and uncomplicated, it also allows the cabinet to examine the risk at many more sources than would be possible if a refined risk assessment was required for each source. If the source fails the initial screening process, a tier 2 or tier 3 risk assessment is required. The methodology used to estimate the potential health impacts from emissions of TAPs for a specific source is to model the airborne emissions for a hypothetical "typical" source. This modeling gives estimated ground level concentrations at varying distances. The input parameters are the parameters the model uses to estimate the downwind, ground level, and maximum 1-hour concentrations for designated distances from the center of the source. Since potential cancer risks and noncancer chronic health impacts require an assessment of the annual average concentration, a U.S. EPA conversion factor is used to estimate the maximum annual average concentration from the annualized maximum-hour concentration. In addition the maximum annual average concentration is discounted by the operating schedule for the hours the source does not emit. Risk assessment is a scientific process used to estimate the probability of adverse health effects resulting from human exposure to hazardous substances. The quantification (in terms of severity or likelihood) of toxicological effects of individual chemicals on humans in dose-response assessments, which the cabinet proposes to utilize, will usually be based on information developed by U.S. EPA. The dose-response relationship is evaluated differently for carcinogenic and noncarcinogenic substances. For carcinogens, it is assumed that there is a linear relationship between a unit increase in dose or

exposure concentration and an increase in cancer risk, with no threshold. The U.S. EPA has developed unit risk estimates (UREs) for evaluating risks from these substances. For noncarcinogens, the U.S. EPA has developed inhalation reference concentrations (RfCs), which represent "a provisional estimate (with uncertainty spanning perhaps an order of magnitude) of the daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime." Available RfC information is thoroughly reviewed and verified by the U.S. EPA's Office of Air Quality Planning and Standards (OAQPS) and then gathered into a database, the Prioritized Chronic Dose Response Values (PDRV) Table 1. The cabinet's list of inhalation unit risk estimates and reference concentrations consists of contaminants whose estimated health effects have been quantified for the inhalation route of exposure and are being proposed in a separate regulation (401 KAR 64:005), which is part of this action. These are the contaminants that will generally be considered in the risk assessments required by this administrative regulation.

(b) The necessity of this administrative regulation: The administrative regulation details the procedures the cabinet will use for determining the environmental risk of emitting air toxic substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: While this administrative regulation is not federally mandated, the cabinet has a state mandate under KRS 224.10-100 to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation meets the statutory mandate by allowing the cabinet to assess the risks that air toxics sources cause to the public and to require emissions reductions if the risks are determined to be unacceptable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed administrative regulation will assist the cabinet in the control of air toxic pollution by providing a clearly articulated and objective method for evaluating a source's air toxic emissions.

(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 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 does not directly impact a specific individual, business, organization, or state government, it merely provides the approvable protocol for sources of air toxic pollutants that are required by 401 KAR Chapter 64 to evaluate their TAP emissions and, if necessary, conduct risk assessments. Concerning local government impacts, the air toxics regulations of the Louisville Metro Air Pollution Control District will be reviewed by the cabinet for relative stringency. That review will be conducted on a holistic, rather than provision-by-provision, basis and no impact on the local government's program is anticipated 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: This administrative regulation does not directly impact any individual, business, organization, or state or local government. This administrative regulation merely provides the approvable protocol for sources of air toxic pollutants that are required by 401 KAR Chapter 64 to conduct risk assessments.

(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 does not directly impact any entity.



(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation does not directly impact any entity.

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

(a) Initially: There are no known new costs.

(b) On a continuing basis: There are no known new costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program is already present in the Division for Air Quality's operating budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. While tiering is an integral part of the proposed air toxics program, tiering is not applicable to the provisions of this administrative regulation.

**FISCAL NOTE ON LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. 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 regulation has the potential to affect any unit, part, or division of state or local government operating an emissions unit that meets the applicability determination of Section 1 of this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5) authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate no new revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate no new revenue.

(c) How much will it cost to administer this program for the first year? Costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)**

**401 KAR 64:030. Air toxics safety net program.**

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100,

224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 63

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes an Air Toxics Safety Net Program to address public health risks from exposure to air toxics emissions from stationary sources when those risks are not addressed by other regulatory programs. There is no federal mandate for this administrative regulation.

Section 1. Applicability. (1) The cabinet may select sources on a case-by-case basis for a tiered risk assessment and potential reduction of air toxics emissions, if the cabinet has information that a source's air toxics emissions, alone or in combination with other sources, may result in:

(a) An excess lifetime cancer risk estimate above one-in-one million (1x10<sup>-6</sup>); or

(b) A Noncancer hazard index (HI) above one and zero-tenths (1.0).

(2) The information required by subsection (1) of this section shall be based on information contained in the source's permit application, the Kentucky Emissions Inventory System (KyEIS), modeling, or ambient monitoring information.

(3) For purposes of the tiered risk assessment and potential reduction of emissions at a source that is identified by the cabinet for coverage under this administrative regulation:

(a) The air toxic of concern (ATC) shall be considered a toxic air pollutant (TAP); and

(b) The source shall be subject to the applicable provisions of 401 KAR Chapter 64 in the same manner as a source that is identified for a tiered risk assessment and emissions reductions under 401 KAR 64:010.

Section 2. Source-Specific Exposure Modeling and Risk Assessment. (1) A source shall provide information that will allow the cabinet to conduct a risk assessment pursuant to 401 KAR 64:020 for air toxics substances the source has the potential to emit at levels that may result in a risk or hazard estimate that exceeds those specified in Section 1(1) of this administrative regulation, after the cabinet:

(a) Consults with the source; and

(b) Provides written notification.

(2) The concentration for the ATC:

(a) Shall be determined using air quality analysis techniques based on:

1. Emissions rates equal to the source's potential to emit for the applicable averaging time; or

2. Another method approved by the cabinet; and

(b) Shall include all emissions from the stationary source.

Section 3. Air Toxics Emissions Reduction Analysis. If source-specific exposure modeling and risk assessment demonstrate that the source's air toxics emissions, alone or in combination with other sources, exceed a risk level established in Section 1(1) of this administrative regulation, the source shall develop and submit to the cabinet a proposed air toxics emissions reduction analysis for TAP-BACT pursuant to 401 KAR 64:010 and 64:020.

TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 11, 2007

FILED WITH LRC: May 14, 2007

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held June 29, 2007 at 10 a.m. at the Transportation Cabinet Conference Center, Auditorium (C-105), 200 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit writ-

ten comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least 5 workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email millie.ellis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation addresses human exposures to air toxic emissions from sources that are not addressed by other regulatory provisions.

(b) The necessity of this administrative regulation: The administrative regulation provides a means for the cabinet to address unacceptable risks to the public caused by air toxic emissions that are not addressed by other regulatory provisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: While this administrative regulation is not federally mandated, the cabinet does have a state mandate under KRS 224.10-100 to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation meets the statutory mandate by allowing the cabinet to assess the risks that air toxics sources cause to the public and to require emissions reductions if the risks are determined to be unacceptable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed administrative regulation will assist the cabinet in the control of air toxic pollution by providing a clearly articulated and objective method for evaluating a source's air toxic emissions.

(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 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 could impact any entity that emits an air toxic substance and for which the cabinet has information that these emissions result in an unacceptable risk after the implementation of all other regulatory programs. Concerning local government impacts, the air toxics regulations of the Louisville Metro Air Pollution Control District will be reviewed by the cabinet for relative stringency. That review will be conducted on a holistic, rather than provision-by-provision, basis and no impact on the local government's program is anticipated 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: The cabinet shall evaluate the public health risk impact from the air toxic emissions of a source identified under this administrative regulation. If the source causes an unacceptable risk, the source will be required to reduce that risk.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed administrative regulation provides that the cabinet will conduct preliminary risk screening and any resultant

health based risk assessment that is deemed necessary. For safety net sources that are required to reduce the risk cause by their air toxic emissions, the cost will vary greatly depending upon the source size and characteristics and any measures that are required for an emissions reduction; therefore, since these determinations will be on a case-by-case basis, it is not possible to accurately quantify these costs. The TAP-BACT requirement, for these sources does; however, include economic impact considerations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Unacceptable health risks caused by the sources' air toxics emissions will be reduced to acceptable levels. In addition, compliance determinations will be made clear and consistent for regulated entities.

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

(a) Initially: Costs are included in the Division for Air Quality's normal day-to-day operating budget.

(b) On a continuing basis: Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has been included in the Division for Air Quality's operating budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not applicable to the requirements of this administrative regulation, which establishes an air toxics safety net program for air toxics sources with an unacceptable risk that is not addressed by other regulatory programs. While tiering is not applied in the proposed administrative regulation, tiering is provided in the cabinet's overall air toxics program established in 401 KAR Chapter 64.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. 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 has the potential to affect any unit, part, or division of state or local government operating an emissions unit that meets the applicability determination of Section 1 of this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5) authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate no new revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate no new revenue.

(c) How much will it cost to administer this program for the first year? Costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for

Air Quality's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department for Environmental Protection**  
**Division for Air Quality**  
**(New Administrative Regulation)**

**401 KAR 64:050. Public review for sources not covered under 401 KAR 52:100.**

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 63

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes provisions for an opportunity for a public review of the demonstration required for air toxics sources who are required to perform a control strategy demonstration under the state air toxics program of 401 KAR Chapter 64 if a public hearing is not required under 401 KAR 52:100. There is no federal mandate for this administrative regulation.

Section 1. Applicability. (1) The provisions of this administrative regulation shall apply to TAP-BACT demonstrations:

(a) Which are voluntarily chosen by the source or are required by the cabinet pursuant to 401 KAR Chapter 64; and

(b) For which a public hearing is not required under 401 KAR 52:100.

(2) The cabinet shall provide a public comment period and a public hearing, if deemed necessary, pursuant to this administrative regulation or 401 KAR 52:100, as applicable, for TAP-BACT demonstrations made pursuant to 401 KAR Chapter 64.

Section 2. Public Notification. (1) The cabinet shall provide public notice of a comment period and any scheduled public hearing for the proposed TAP-BACT demonstration by publication on the Division for Air Quality Web page at <http://www.air.ky.gov/>; and

(2) The cabinet may provide additional notice to the public through other methods, including publication in a local newspaper, newsletters and press releases.

Section 3. Information Included in the Public Notice. The public notice shall include the following information:

(1) Contact name and address of the Environmental and Public Protection Cabinet, Department for Environmental Protection, Division for Air Quality;

(2) Name and address of the owner or operator of the source if different from the name and address of the source;

(3) A brief description of the business conducted at the source and the activity involved in the TAP-BACT demonstration;

(4) A brief description of the comment procedures, including how to request a hearing;

(5) Date, time, and place of the hearing, if a public hearing has been scheduled;

(6) The end date of the public comment period;

(7) Reference to the dates of previous public notices relating to the demonstration; and

(8) Name, address, and telephone number where interested persons may obtain the documentation specified in Section 5 of this administrative regulation.

Section 4. Distribution of Public Notice. The cabinet shall distribute electronic copies of the public notice to:

(1) The owner or operator of the source preparing the demon-

stration; and

(2) All persons on the mailing list specified in 401 KAR 52:100, Section 7.

Section 5. Public Inspection of Documents. (1) Except for information that has been determined by the cabinet to be confidential, the cabinet shall make available for public inspection the following:

(a) The TAP-BACT demonstration;

(b) The source's permit application; and

(c) The following supporting materials:

1. A description of the pollutants of concern and the possible health impacts;

2. A statement listing the applicable requirements of 401 KAR Chapter 64;

3. The name, telephone number, and email address of a cabinet staff person from whom additional information may be obtained; and

4. Information relevant to the TAP-BACT demonstration, which shall include:

a. Information produced by the owner or operator demonstrating that the emissions from the source do not cause unacceptable risk;

b. Material Safety Data Sheets (MSDS);

c. The analysis and preliminary determination of the cabinet; and

d. Other materials available to the cabinet that are relevant to the tentative determination.

(2) The documentation shall be made available at:

(a) The main office of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601; and

(b) The Regional Office of the Division for Air Quality having jurisdiction over the source.

Section 6. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

(a) On the basis of written requests received, material issues have been raised concerning the TAP-BACT demonstration; or

(b) The action is of significant interest to the public.

(2) A request for a hearing shall not require an extension of the comment period; however, the cabinet may allow additional time after the close of a public hearing for public hearing participants to submit their comments in writing.

(3) If a public hearing is held, the cabinet shall:

(a) Provide public notice on the Division for Air Quality's webpage at [www.air.ky.gov](http://www.air.ky.gov/) at least thirty (30) days prior to the scheduled hearing date; and

(b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the hearing.

(4) Any person may submit statements or data during the hearing concerning the TAP-BACT demonstration.

(5) The cabinet may:

(a) Set reasonable limits on the time allowed for oral statements; and

(b) Require that statements be submitted in writing.

(6) The cabinet shall:

(a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;

(b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, for public review; and

(c) Make available to the public at a reasonable reproduction cost;

1. A tape recording or written transcript of the hearing; and

2. If requested, a written transcript in large type or Braille.

(d) Provide a minimum of thirty (30) days for public comment; and

(e) Prepare a response to the comments received during the comment period.

Section 7. The Comment Period and Response to Comments.

(1) The comment period shall begin on the date the public notice is published on the Division for Air Quality's webpage at

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www.air.ky.gov and shall end thirty (30) days after the publication date.

(2) The cabinet shall consider:

(a) All written comments received during the public comment period;

(b) Oral and written comments received at a public hearing, if applicable;

(c) Comments received in alternate format to accommodate persons with disabilities; and

(d) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.

(3) The cabinet shall keep a record of the commenters and issues raised during the public comment period and shall make this record available, upon request, for public review.

TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 11, 2007

FILED WITH LRC: May 14, 2007 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held June 29, 2007 at 10 a.m. at the Transportation Cabinet Conference Center, Auditorium (C-105), 200 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

**CONTACT PERSON:** Millie Ellis, Environmental Technologist III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, email milie.ellis@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures to be used by the cabinet when providing the public an opportunity to review TAP-BACT determinations, which are required under 401 KAR Chapter 64.

(b) The necessity of this administrative regulation: Many of the sources that are proposed to become subject to the requirement to install TAP-BACT pursuant to 401 KAR Chapter 64 will be subject to the federally-enforceable public hearing requirements of 401 KAR 52:100; however, this administrative regulation is being proposed to cover those sources that are not covered under 401 KAR 52:100. This administrative regulation and the public review requirements of 401 KAR 52:100 will allow state air toxics permitting to be an open, transparent process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution and this administrative regulation assists the cabinet in the performance of that duty.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the public an opportunity to comment on the control strategies that are mandated for air toxic sources.

(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 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. All sources that are required to install TAP-BACT pursuant to 401 KAR Chapter 64, and which are not covered by the federally-enforceable requirements of 401 KAR 52:100, will be subject to this administrative regulation. Concerning local government impacts, the air toxics regulations of the Louisville Metro Air Pollution Control District will be reviewed by the cabinet for relative stringency. That review will be conducted on a holistic, rather than provision-by-provision, basis, and no impact on the local government's program is anticipated 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: This administrative regulation will not directly affect any individual, business, organization, or state or local government.

(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 not directly affect any individual, business, organization, or state or local government.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will not directly affect any individual, business, organization, or state or local government.

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

(a) Initially: Costs are included in the Division for Air Quality's normal day-to-day operating budget.

(b) On a continuing basis: Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has been included in the Division for Air Quality's operating budget. To reduce costs, the public notification for TAP-BACT determinations covered under this administrative regulation will be published on the cabinet's internet webpage which is already an existing resource.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not applicable to the requirements of this administrative regulation. While tiering is not applied in the proposed administrative regulation, tiering is provided in the cabinet's overall air toxics program established in 401 KAR Chapter 64.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation does not relate to any aspect of a state or local government agency.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5) authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed administrative regulation will generate no new revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The proposed administrative regulation will generate no new revenue.

(c) How much will it cost to administer this program for the first year? Costs will be included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Public Protection**  
**Office of Insurance**  
**Life Insurance Division**  
**(New Administrative Regulation)**

**806 KAR 6:120. Recognition of preferred mortality tables for use in determining minimum reserve liabilities.**

RELATES TO: KRS 304.6-130 – 304.6-180

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-140, 806 KAR 6:075

NECESSITY, FUNCTION AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.6-140 provides that the executive director may approve by administrative regulation any mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with KRS 304.6-140 and 806 KAR 6:075.

Section 1. Definitions. (1) "2001 CSO Mortality Table" means a mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002. The 2001 CSO Mortality Table is published in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both:

(a) The ultimate form and the select and ultimate form of the table;

(b) The smoker and nonsmoker mortality tables and the composite mortality tables; and

(c) The age-nearest-birthday and the age-last-birthday bases of the mortality tables.

(2) "2001 CSO Mortality Table (F)" means a mortality table

consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(3) "2001 CSO Mortality Table (M)" means a mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(4) "2001 CSO Preferred Class Structure Mortality Table" means a mortality table with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers and residual standard smoker splits of the 2001 CSO nonsmoker and smoker tables as described in the report dated January 13, 2006, and adopted by the National Association of Insurance Commissioners at the June 2006 meeting and published in the minutes for that meeting. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both:

(a) The ultimate form and the select and ultimate form of the table;

(b) The smoker and nonsmoker mortality tables;

(c) The male and female mortality tables and the gender composite mortality table; and

(d) The age-nearest-birthday and age-last-birthday bases of the table.

(5) "CSO" means Commissioners Standard Ordinary.

(6) "Composite mortality tables" mean the mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(7) "Executive director" is defined in KRS 304.1-050(1).

(8) "Smoker and nonsmoker mortality tables" mean mortality tables with separate rates of mortality for smokers and nonsmokers.

(9) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and a history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregations of data and accurate promulgation of the experience modifications in a timely manner.

Section 2. 2001 CSO Preferred Class Structure Table. (1) At the election of the insurer for any one or more specified plan of insurance and subject to the conditions stated in this administrative regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker and Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007, to which KRS 304.6-140 and 806 KAR 6:075 are applicable.

(2) No election shall be made until the insurer can demonstrate at least twenty (20) percent of the business to be valued on this table is in one or more of the preferred classes.

(3) A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this administrative regulation, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of 806 KAR 6:110.

Section 3. Conditions. (1) For each policy of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten (10) years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being

used for that class.

(2) For each policy of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten (10) years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basis table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

TIMOTHY J. LEDONNE, Commissioner

JULIE MIX MCPEAK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007, 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 until July 2, 2007. 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with KRS 304.6-140 and 806 KAR 6:075.

(b) The necessity of this administrative regulation: The current system of reserving for life insurance does not address all insurance risks and reserves are too conservative for some companies and not adequate for other companies. A collaborative effort is underway to develop a uniform approach for a new reserving method that will address those issues; however, many states, including Kentucky, have reserving methods that will expire in 2007. This regulation will continue the current system while adopting new mortality tables that represent an incremental step in moving towards this new reserving method.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. KRS 304.6-140 provides that the executive director may approve by administrative regulation any mortality table adopted by the national Association of Insurance Commissioners for use in determining the minimum standard for

valuation of policies. This administrative regulation establishes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with KRS 304.6-140 and 806 KAR 6:075.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities for life insurance policies. The laws establishing Kentucky's current reserve methods expire in 2007. This administrative regulation will continue the current system while adopting new mortality tables that represent an incremental step in moving towards a new reserving method that considers an insurer's risk and appropriate reserves based on that risk.

(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 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 regulation will affect the approximately 520 insurers that are licensed to offer life insurance in Kentucky, and the approximately 43,000 insurance agents that are licensed to sell life insurance in Kentucky.

(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: Regulated entities will be required to utilize these new mortality tables in calculating their reserves.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: The cost will be minimal.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: the budget of the Kentucky Office of Insurance will be used for 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. There will be no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.



FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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:

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Public Protection**  
**Office of Insurance**  
**Life Insurance Division**  
**(New Administrative Regulation)**

**806 KAR 12:120. Suitability in annuity transactions.**

RELATES TO: KRS 304.9-390, 304.12-010, 304.99-020

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation sets forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020.

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Consultant" is defined in KRS 304.9-040.

(4) "Executive director" is defined in KRS 304.1-050(1).

(5) "Insurance producer" is defined in KRS 304.9-020(4).

(6) "Insurer" is defined in KRS 304.1-040.

(7) "Licensee," means agent, insurer where no agent is involved, and consultant.

(8) "Recommendation" means advice provided by a licensee, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Section 2. Exemptions. Unless otherwise specifically included, this administrative regulation shall not apply to recommendations involving:

(1) Direct response solicitations where there is no recommen-

ation based on information collected from the consumer pursuant to this regulation;

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(c) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Prepaid funeral contracts.

Section 3. Duties of Licensees. (1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain information concerning:

(a) The consumer's financial status;

(b) The consumer's tax status;

(c) The consumer's investment objectives;

(d) The consumer's risk tolerance; and

(e) Other information used or considered to be reasonable by the licensee in making recommendations to the consumer.

(3)(a) Except as provided under paragraph (b) of this subsection, the licensee shall have no obligation to a consumer under subsection (1) related to any recommendation if a consumer:

1. Refuses to provide relevant information requested by the licensee;

2. Decides to enter into an insurance transaction that is not based on a recommendation of the licensee; or

3. Fails to provide complete or accurate information.

(b) A licensee's recommendation subject to paragraph (a) shall be reasonable under all the circumstances actually known to the licensee at the time of the recommendation.

(4)(a) An insurer either:

1. Shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this administrative regulation is established and maintained by complying with paragraphs (c) through (e) of this subsection, or

2. Shall:

a. Establish and maintain written procedures; and

b. Conduct periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this administrative regulation.

(b) A supervising insurance producer shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this administrative regulation, or shall establish and maintain such a system, including, but not limited to:

1. Maintaining written procedures; and

2. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this administrative regulation.

(c) An insurer may contract with a third party, including an insurance producer, to establish and maintain a system of supervision as required by paragraph (a) of this subsection with respect to insurance agents under contract with or employed by the third party.

(d) An insurer shall make reasonable inquiry to assure that the third party contracting under paragraph (c) of this subsection is



performing the functions required under paragraph (a) of this subsection and shall take action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

1. The insurer annually obtains a certification from a senior manager of the third party who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

2. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under paragraph (c) of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that is reasonable under the circumstances.

(e) An insurer that contracts with a third party pursuant to paragraph (c) of this subsection and that complies with the requirements to supervise in paragraph (d) of this subsection shall have fulfilled its responsibilities under paragraph (a) of this subsection.

(f) An insurer or supervising insurance producer shall not be required by paragraph (a) or (b) of this subsection to:

1. Review, or provide for review of, all agent solicited transactions; or

2. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer or supervising insurance producer.

(g) A supervising insurance producer contracting with an insurer pursuant to paragraph (c) of this subsection shall promptly, when requested by the insurer pursuant to paragraph (d) of this subsection, give a certification as described in paragraph (d)(1) of this subsection or give a clear statement that it is unable to meet the certification criteria.

(h) No person may provide a certification under paragraph (d)(1) of this subsection unless:

1. The person is a senior manager with responsibility for the delegated functions; and

2. The person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the executive director's ability to enforce the provisions of this administrative regulation.

Section 4. Mitigation of Responsibility. (1) The executive director may require:

(a) An insurer to take appropriate corrective action for any consumer harmed by the insurer's, or by its agent's, violation of this administrative regulation;

(b) An agent to take appropriate corrective action for any consumer harmed by the insurance agent's violation of this administrative regulation;

(c) A supervising insurance producer that employs or contracts with an insurance agent to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the agent's violation of this regulation; and

(d) A consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(2) Any applicable penalty under KRS 304.99-020 for a violation of Section 3(1), (2) or (3) of this administrative regulation may be reduced or eliminated, if corrective action for the consumer was taken promptly after a violation was discovered.

Section 6. Recordkeeping. Licensees shall maintain records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2:070.

Section 7. Effective Date. The requirements, implementation, and enforcement of this regulation shall begin on December 1,

2007.

LLOYD R. CRESS, Deputy Secretary  
For TERESA J. HILL, Secretary  
TIMOTHY J. LEDONNE, Commissioner  
JULIE MIX MCPEAK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007, 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 until July 2, 2007. 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that purchasers of annuities are being offered products that are appropriate for their individual financial objectives.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation will clarify the duty to evaluate the consumer's financial status before recommending the purchase of a new or replacement annuity product.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will require agents and insurers, if no agent is involved, to evaluate a consumer's financial status, objectives, and risk tolerance before recommending the purchase of an annuity and to provide safeguards against inappropriate purchases.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers and, 43,000 agents that are licensed to offer annuity products in Kentucky.

(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, includ-

ing:

(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 be required to demonstrate that an annuity purchase is a suitable transaction for a prospective buyer in accordance with this regulation, using existing resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that, because this is a national standard, that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes insurance regulation of annuity products across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: The initial cost to implement this administrative regulation will be minimal.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementing and enforcing this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies and agents offering annuity products in Kentucky.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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:

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

**Department of Public Protection  
Office of Insurance  
Life Insurance Division  
(New Administrative Regulation)**

**806 KAR 12:140. Life insurance illustrations.**

RELATES TO: KRS 304.12-010, 304.12-020

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation provides illustration formats, prescribes standards to be followed if illustrations are used, and specifies the disclosures that are required in connection with illustrations for life insurance policies.

Section 1. Definitions. (1) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(2) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and non-guaranteed elements that is given to the applicant or policy owner no later than the time of delivery of the policy.

(3) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

(4) "Currently payable scale" means a scale of non-guaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five (95) days.

(5) "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience.

(6) "Executive director" is defined in KRS 304.1-050(1).

(7) "Generic name" means a short title descriptive of the policy being illustrated.

(8) "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

(9) "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(a) The disciplined current scale; or

(b) The currently payable scale.

(10) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years and that is either a basic illustration, supplemental illustration or in force illustration.

(11) "Illustration actuary" means an actuary meeting the requirements of Section 12 of this administrative regulation who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

(12) "In force illustration" means an illustration furnished at any time after the policy has been in force for one (1) year or more.

(13) "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this administrative regulation, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five (5) years and 100 percent policy persistency thereafter.

(14) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form.

(15) "Nonguaranteed elements" means the premiums, benefits,

values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(16) "Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(a) Every plan of coverage was selected by the employer or other group representative;

(b) Some portion of the premium is paid by the group or through payroll deduction; and

(c) Group underwriting or simplified underwriting is used.

(17) "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

(18) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

(19) "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, if using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth (15th) policy anniversary or the twentieth (20th) policy anniversary for second-or-later-to-die policies or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For the purpose of a self-supporting illustration, policy owner value shall include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

(20) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this administrative regulation.

Section 2. Applicability and Scope. This administrative regulation applies to all group and individual life insurance policies sold and certificates issued on or after the effective date of this administrative regulation except:

(1) Variable life insurance;

(2) Individual and group annuity contracts;

(3) Credit life insurance; and

(4) Life insurance policies, where illustrated death benefits on any individual do not exceed ten thousand (10,000) dollars at any time.

Section 3. Disciplined Current Scale. (1) A disciplined current scale shall be certified annually by an illustration actuary designated by the insurer.

(2) Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

(a) Are consistent with all provisions of this administrative regulation;

(b) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;

(c) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and

(d) Do not permit assumed expenses to be less than minimum assumed expenses.

Section 4. Minimum Assumed Expenses. (1) Each year, the insurer may choose to designate the method of determining assumed expenses for all policy forms from the following:

(a) Fully allocated expenses;

(b) Marginal expenses; and

(c) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the executive director.

(2) Marginal expenses may be used only if they are greater than a generally recognized expense table. If a generally recognized expense table is not approved, fully allocated expenses shall be used.

Section 5. Supplemental Illustration. A supplemental illustration may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

Section 6. Policies to Be Illustrated. (1) Each insurer marketing policies to which this administrative regulation applies shall notify the executive director as to whether a policy form is to be marketed with or without an illustration.

(a) For all policy forms being actively marketed on the effective date of this administrative regulation, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. Written identification shall be submitted to the executive director on or before the effective date of this administrative regulation.

(b) For policy forms filed after the effective date of this administrative regulation, the identification shall be made when the policy form is filed. Any previous identification may be changed by notice to the executive director.

(2) If the insurer identifies a policy as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary shall be prohibited.

(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared in accordance with this administrative regulation and delivered no later than the time of delivery of the policy shall be required.

(a) A basic illustration shall not be required to be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals.

(b) The illustration furnished to an applicant for a group life insurance policy issued to a single applicant on multiple lives may be either:

1. an individual or composite illustration representative of the coverage on the lives of members of the group; or

2. an individual or composite illustration representative of the multiple lives covered.

(4)(a) Potential enrollees of a non-term group life insurance policy subject to this administrative regulation shall be furnished a quotation with the enrollment materials.

(b) The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage.

(c) The quotation shall not be considered an illustration for purposes of this administrative regulation, but all information provided shall be consistent with the illustrated scale.

(d) A basic illustration shall be provided at delivery of the certificate to enrollees for a non-term group life insurance policy who enroll for more than the minimum premium necessary to provide pure death benefit protection.

(e) An insurer shall make a basic illustration available to any enrollee of a non-term group life insurance policy upon request of the enrollee.

Section 7. General Rules and Prohibitions. (1) An illustration used in the sale of a life insurance policy shall:

(a) Satisfy the applicable requirements of this administrative regulation;

(b) Be clearly labeled "life insurance illustration"; and

(c) Contain the following basic information:

1. Name of insurer;

2. Name and business address of the insurer's authorized representative, if any;

3. Name, age and gender of the proposed insured, except where a composite illustration is permitted under this administrative regulation;

4. Underwriting, rating, or rating classification upon which the illustration is based;

5. Generic name of the insurance policy, the company product name, if different, and the form number;

6. Initial death benefit; and

7. Dividend option election or application of non-guaranteed elements, if applicable.

(2) If an insurer uses an illustration in the sale of a life insurance policy, an insurer or its authorized representatives shall not:

(a) Represent the policy as anything other than a life insurance policy;

(b) Use or describe non-guaranteed elements in a manner that is misleading or has the capacity to mislead;

(c) State or imply that the payment or amount of non-guaranteed elements is guaranteed;

(d) Use an illustration that does not comply with the requirements of this administrative regulation;

(e) Use an illustration that depicts policy performance at any policy duration more favorable to the policy owner than the policy performance produced by the insurer's illustrated scale;

(f) Provide an incomplete illustration;

(g) Represent in any way that premium payments shall not be required for each year of the policy in order to maintain the illustrated death benefits, except for policies that do not require premium payments for each year of the policy in order to maintain the illustrated death benefit;

(h) Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up to describe a plan for using non-guaranteed elements to pay a portion of future premiums;

(i) Use an illustration that is lapse-supporting, except for policies that can never develop nonforfeiture values; or

(j) Use an illustration that is not self-supporting.

Section 8. Standards for Basic Illustrations. (1) A basic illustration shall conform with the following format requirements:

(a) The illustration shall include the date on which it was prepared.

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration.

(c) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.

(d) If the age of the proposed insured is shown as a component of the tabular detail, the age shall be issue age plus the number of years the policy is assumed to have been in force.

(e) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

(f) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

(g) If the illustration shows any nonguaranteed elements, they shall not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

(h) Any guaranteed elements shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements.

(i) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(j) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

(k) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(l) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

1. The benefits and values are not guaranteed;
2. The assumptions on which they are based are subject to change by the insurer; and
3. Actual results may be more or less favorable.

(m) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any further purpose, the illustration may reflect those plans and the impact on future policy benefits.

(n) If the illustration shows that the premium payor may have the option to allow policy charges to be paid using dividends or any other non-guaranteed value, the illustration shall clearly disclose

that a charge continues to be required and that, depending on actual results, the premium payor may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(2) A basic illustration shall include a narrative summary that conforms to the following requirements:

(a) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(b) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that shall be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(c) A brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(d) Identification and a brief definition of column headings and key terms used in the illustration; and

(e) A statement containing in substance the following: "This illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(3)(a) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable.

(b) For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium.

(c) The summary required by subsection (3)(a) of this section for a policy that provides for a contract premium shall be shown for at least policy years five (5), ten (10), and twenty (20) and age seventy (70), if applicable, for the bases set forth in subsection (3)(e) of this section. If coverage would cease prior to policy maturity or age one (100) hundred, the year in which coverage ceases shall also be shown.

(d) The summary required by subsection (3)(a) of this section for multiple life insurance policies shall show policy years five (5), ten (10), and twenty (20) and thirty (30) for each of the bases set forth in subsection (3)(e) of this section. If coverage would cease prior to policy maturity or age one (100) hundred the year in which coverage ceases shall also be shown.

(e) The bases that shall be illustrated are as follows:

1. Policy guarantees;
2. Insurer's illustrated scale; and
3. Insurer's illustrated scale with the non-guaranteed elements reduced as follows:

a. Dividends at fifty (50) percent of the dividends contained in the illustrated scale used;

b. Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

c. All nonguaranteed charges, including but not limited to, term insurance charges, mortality and expense charges at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(4) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner if an illustration is provided when the policy is delivered, as required in this administrative regulation.

(a) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

(b) A statement to be signed and dated by the insurance agent reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any

nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(5)(a) A basic illustration shall include the following tabular detail for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age one (100) hundred, policy maturity or final expiration and, except for term insurance beyond the twentieth (20th) year, for any year in which the premium outlay and contract premium, if applicable, is to change:

1. The premium outlay and the mode the applicant plans to pay and the contract premium, as applicable;
2. The corresponding guaranteed death benefit, as provided in the policy; and
3. The corresponding guaranteed value available upon surrender, as provided in the policy;

(b) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(c) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they shall be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

Section 9. Standards for Supplemental Illustrations. (1) A supplemental illustration may be provided if:

(a) It is appended to, accompanied by or preceded by a basic illustration that complies with this administrative regulation;

(b) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(c) It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

(d) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

Section 10. Delivery of Illustration and Record Retention. (1)(a) If a basic illustration is used by an insurance agent in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this administrative regulation, shall be submitted to the insurer when the policy application is submitted. A copy also shall be provided to the applicant.

(b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall:

1. Conform to the requirements of this administrative regulation;
2. Be labeled "Revised Illustration;" and
3. Be signed and dated by the applicant or policy owner and insurance agent no later than the time the policy is delivered.

(c) A copy shall be provided to the insurer and the policy owner.

(2)(a) If no illustration is used by an insurance agent or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the insurance agent shall certify to that effect in writing on a form provided by the insurer. On the same form, the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than when the policy is delivered. This form shall be submitted to the insurer when the policy application is submitted.

(b) If the policy is issued, a basic illustration conforming to the

policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(3) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(4) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with a certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer in accordance with 806 KAR 2:070.

Section 11. Annual Report; Notice to Policy Owners. (1) If a policy form is designated as one for which illustrations shall be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain, at a minimum, the following information:

(a) For universal life insurance policies, the report shall include the following:

1. The beginning and end date of the current report period;
2. The policy value at the end of the previous report period and at the end of the current report period;
3. The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type;
4. The current death benefit at the end of the current report period on each life covered by the policy;
5. The net cash surrender value of the policy as of the end of the current report period;
6. The amount of outstanding loans, if any, as of the end of the current report period; and

7.a. For fixed premium policies, if, assuming guaranteed interest, mortality and expense loads, and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

b. For flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(b) For all other policies, where applicable:

1. Current death benefit;
2. Annual contract premium;
3. Current cash surrender value;
4. Current dividend;
5. Application of current dividend; and
6. Amount of outstanding loan.

(c) Insurers writing life insurance policies that do not build non-forfeiture values shall only be required to provide an annual report with respect to these policies for those years if a change has been made to non-guaranteed policy elements by the insurer.

(2) If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive a current illustration of your policy within thirty (30) days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

(3) Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of sections 7(1), 7(2) and 8(5) of this administrative regulation. No signature or other acknowledgment of receipt of this illustration shall be required.

(4) If an adverse change in non-guaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

Section 12. Annual Certifications. (1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance promulgated by the Actuarial Standards Board, and that the illustrated scale meets the requirements of this administrative regulation.

(3) The illustration actuary shall:

(a) Be a member in good standing of the American Academy of Actuaries;

(b) Be familiar with the standard of practice regarding life insurance policy illustrations;

(c) Not have been found by the executive director, following appropriate notice and hearing, to have:

1. Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

2. Been found guilty of fraudulent or dishonest practices;

3. Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

4. Resigned or been removed as an illustration actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a failure to adhere to generally acceptable actuarial standards;

(d) Notify the executive director of any action taken by a commissioner of another state similar to that under paragraph (3)(c) of this section;

(e) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five (5) years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If non-guaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this shall be disclosed in the annual certification. If non-guaranteed elements illustrated for both new and in force policies are not consistent with the non-guaranteed elements actually being paid, charged or credited to the same or similar forms, this shall be disclosed in the annual certification; and

(f) Disclose in the annual certification which of the following methods were used to allocate overhead expenses for all illustrations:

1. Fully allocated expenses;

2. Marginal expenses; or

3. A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the executive director.

(4)(a) The illustration actuary shall file a certification with the board of directors of the insurer and with the executive director:

1. Annually for all policy forms for which illustrations are used; and

2. Before a new policy form is illustrated.

(b) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the executive director promptly.

(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the executive director promptly of his or her inability to certify.

(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) That the illustration formats meet the requirements of this administrative regulation and that the scales used in illustrations

are those scales certified by the illustration actuary; and

(b) That the insurer has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (3)(f) of this section.

(7) The annual certifications shall be provided to the executive director each year by a date determined by the insurer.

(8) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the executive director of that fact promptly and disclose the reason for the change.

Section 6. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on December 1, 2007.

LLOYD R. CRESS, Deputy Secretary

For Teresa J. Hill, Secretary

TIMOTHY J. LEDONNE, Commissioner

JULIE MIX MCPEAK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007, 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 until July 2, 2007. 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the formats for illustrations used in the sale of life insurance policies, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable by prescribing a standard format for all illustrations that will eliminate, as far as possible, the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation will clarify the format and language used in illustrations for life insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide requirements for life insurance policy illustrations that will protect consumers and foster consumer education. The requirements in this administrative regulation provide a format for all illustrations that will eliminate, as far as possible, the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person



within the segment of the public to which the illustration is directed.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance in Kentucky, and the approximately 43,000 insurance agents that are licensed to sell life insurance in Kentucky.

(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: Regulated entities will be required to conform to uniform standards for the content and application of life insurance illustrations, using their existing resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: The cost will be minimal.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for 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. There will be no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies and insurance agents offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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:

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Public Protection**  
**Office of Insurance**  
**Life Insurance Division**  
**(New Administrative Regulation)**

**806 KAR 12:150. Annuity disclosures.**

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance and Annuities Buyer's Guide published by the Commonwealth of Kentucky Office of Insurance.

(2) "Charitable gift annuity" is defined in KRS 304.1-120.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates including any bonus, benefits, values, noninterest based credits, charges or elements of formulas used to determine at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

(7) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.



(8) "Nonguaranteed elements" means the premiums, credited interest rates including any bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(9) "Structured settlement annuity" means

(a) A "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code; or

(b) An annuity that would be a qualified funding asset under section 130(d) except for the fact that it is not owned by an assignee under a qualified assignment.

Section 2. Applicability. This administrative regulation applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products;

(2)(a) Annuities used to fund:

1. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

2. A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b) Notwithstanding Paragraph (a) of this subsection this administrative regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(3) Structured settlement annuities;

(4) Charitable gift annuities; and

(5) Funding agreements.

Section 3. Standards for the disclosure document and buyer's guide. (1)(a) Where the application for an annuity contract is solicited personally by an agent, the applicant shall be given both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than the time of application.

(b) Where the application for an annuity contract is taken by means other than a personal solicitation by an agent, the applicant shall be sent both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

1. With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

2. With respect to an application received via the Internet:

a. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days or receipt of the application.

b. Taking reasonable steps to make the disclosure document

available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

3. A solicitation for an annuity contract that is not personally solicited by an agent shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

(c) Where the Buyer's Guide and disclosure document described in subsection (3) of this section are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look period shall run concurrently with any other free look period provided under state law or regulation.

(2) The following information shall be included in the disclosure document required to be provided under this administrative regulation:

(a) The generic name of the contract, the company product name, if different, form number, and the fact that it is an annuity;

(b) The insurer's name and address;

(c) A description of the contract and its benefits, emphasizing its long-term nature, including the following information:

1. The guaranteed, nonguaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

2. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

3. Periodic income options both on a guaranteed and nonguaranteed basis;

4. Any value reductions caused by withdrawals from or surrender of the contract;

5. How values in the contract can be accessed;

6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. An explanation of the impact of any rider, such as a long-term care rider.

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply.

(e) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(3) The disclosure statement shall comply with the minimum standards for readability and intelligibility in 806 KAR 14:121.

Section 4. Report to Contract Owners. (1) For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(2) The beginning and end date of the current report period;

(3) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(4) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

(5) The amount of outstanding loans, if any, as of the end of the current report period.

Section 5. Effective Date. The requirements, implementation, and enforcement of this regulation shall begin on December 1, 2007.

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals in-

interested in being heard at this hearing shall notify this agency in writing by June 19, 2007, 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 until July 2, 2007. 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to annuity buyers that will help the buyer select the most appropriate insurance for the buyer's needs and help the buyer understand the product features.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for annuity disclosures to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary following, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code. KRS 304.12-020, 304.12-030, and 304.12-230 require insurance marketing information to be accurate and not deceptive or misleading. This administrative regulation will standardize annuity disclosures to the consumer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation formalizes a procedure for complying with the statute.

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

(a) How the amendment will change this existing administrative regulation: 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 regulation will affect the approximately 520 insurers that are licensed to offer annuity products in Kentucky and the approximately 43,000 insurance agents that are licensed to sell annuities in Kentucky.

(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: Regulated entities will be required to comply with the uniform standards for disclosures to annuity buyers, using their existing resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is part of a package that standardizes the regulation of annuity marketing across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: The cost will be minimal.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for 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. There will be no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering annuity products in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department of Public Protection  
Office of Insurance  
Life Insurance Division  
(New Administrative Regulation)

806 KAR 12:160. Standards for accelerated death benefits.

RELATES TO: KRS 304.6-170, 304.6-171, 304.12-010,

## VOLUME 33, NUMBER 12 – JUNE 1, 2007

304.12-020, 304.12-235, 304.14-600(2), 304.15-115, 806 KAR 14:005

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation sets forth standards for accelerated death benefits in individual life insurance forms.

Section 1. Definitions. (1) "Accelerated death benefit" means the advance payment of some or all of the death proceeds payable under a life insurance policy:

(a) To the owner, during the lifetime of the insured at the time of a qualifying event;

(b) That reduces the death benefit otherwise payable under the policy through a present value payment or imposition of a lien upon the death benefits; and

(c) That are payable upon the occurrence of any single qualifying event with respect to the insured resulting in the payment of a benefit amount fixed at the time of acceleration.

(2) "Executive director" is defined in KRS 304.1-050(1).

(3) "Form" means accelerated death benefit form, or policy provision if the benefit is built into the policy.

(4) "Office" is defined in KRS 304.1-050(2).

(5) "Qualifying event" means a medical condition that is reasonably expected to result in a drastically limited life span for the insured. The company's definition of a drastically limited life span shall have a minimum of "6 months or less" and a maximum of "24 months or less", and shall be specified in the form.

Section 2. Applicability. These standards apply to accelerated death benefits in individual life insurance policies. These standards shall not apply to long-term care insurance or policies providing long-term care benefits.

Section 3. Form Filings. The following form filing requirements apply to accelerated death benefits and shall be included on Form L-TD (1/1/06), incorporated by reference in 806 KAR 14:006, or as an attachment to the filing:

(1) A statement of the types of policy forms with which this benefit will be offered.

(2) Any underwriting restrictions involving face amount or age.

(3) Whether the benefit is intended for use with new issues, or in force business, or both.

(4) A notice describing the amount of the accelerated benefit option and its effect on the other benefit provisions of the policy, to be provided to the owner prior to or concurrent with the election of the accelerated death benefit option.

(5) An actuarial memorandum prepared, dated and signed by the member of the American Academy of Actuaries which shall provide the following information:

(a) A description of the accelerated death benefit, including the effects of payment of the accelerated death benefit on all policy benefits, premium payments, cost of insurance rates, and values, including any outstanding loan, if applicable, for all types of forms with which the accelerated death benefit will be used;

(b) Justification for expense charges associated with the accelerated death benefit and the maximum expense charges;

(c) The interest rate or interest rate methodology used in any present value calculation or in accruing interest on the amount of the accelerated death benefit, which shall not exceed the greater of:

1. The current yield on 90-day treasury bills; or

2. An adjustable rate determined in accordance with KRS 304.15-115;

(d) The mortality basis and methodology, including the period of time applicable to any mortality discount, used in any present value calculation of the accelerated death benefit;

(e) The mortality and morbidity basis and methodology used in the determination of any separate premium or costs of insurance for the accelerated death benefit;

(f) The formula used to determine the accelerated death bene-

fit, including any limitations on the amount of the benefit, and the formula used to determine the post-acceleration premium;

(g) A sample calculation of the accelerated death benefit. If the policy contains a loan provision, the example shall assume that there is an outstanding loan at date of acceleration. All policy benefits, premium payments, cost of insurance charges and values, including the outstanding loan, if applicable, immediately before and immediately after acceleration must be shown in the example;

(h) If an accelerated death benefit may be paid in installments, the basis used in the calculation of the minimum periodic payment for the payment period and a sample calculation of a minimum periodic payment. If the insured dies before all periodic payments for the payment period are made, identification of the basis used and a sample calculation of the lump sum payable; and

(i) A certification that the value and premium of the accelerated death benefit is incidental to the life coverage.

Section 4. General Form Requirements. (1) The cover page of the form, or the cover page of the policy if the benefit is built into the policy, shall include the following in prominent type:

(a) The term "accelerated death benefit" shall be included in the brief description or descriptive title of the form.

(b) A clear statement that the death benefit and any accumulation values and cash values, and, if applicable, premium payments or cost of insurance charges, will be reduced if an accelerated death benefit is paid.

(c) A clear statement that the owner should seek additional information from his personal tax advisor about the tax status of the accelerated death benefit payment.

(2) The form shall not contain provisions that unfairly discriminate among insureds with differing qualifying events covered under the form, or among insureds with similar qualifying events covered under the form.

(3) Products subject to these standards shall not be described as long-term care insurance or as providing long-term care benefits.

(4) The percentage or dollar amount of the policy death benefit that may be accelerated may be limited. Any limit shall be specified in the form.

(5) A time frame within which proof of eligibility must be provided is prohibited.

Section 5. Benefit Design Options. (1) The form shall describe the accelerated death benefit option or options that are available to the owner, such as the payment of all of the death benefit of the policy, the payment of part of the death benefit of the policy, or a lien on the death benefit of the policy.

(2) If the form allows for the present value calculation, the form shall:

(a) Specify the amount of the death benefit of the policy that may be accelerated by the owner;

(b) State that the company may apply a portion of the accelerated death benefit to repay an outstanding policy loan but only up to the amount of the outstanding policy loan multiplied by the percentage of the policy death benefit that has been accelerated;

(c) State that the premium shall be reduced to the premium that would apply had the policy been issued at the reduced amount, and may be further reduced according to some defined formula, such as pro rata reduction, or become paid-up;

(d) State that the company may pay the owner a present value of the policy death benefit that is being accelerated. The interest rate or interest rate methodology used in the calculation shall be disclosed in the form; and

(e) State that the policy cash value, if any, shall be reduced by the same percentage as the policy death benefit.

(3) If the payment to the owner of the accelerated death benefit is treated as a lien on the death benefits of the policy, the form shall state that:

(a) The lien may be applied only against the policy death benefit, not against any policy cash value;

(b) The lien may bear interest. The interest rate accrued on the portion of the lien which is equal to the cash value of the policy at the time of acceleration shall be no more than the policy loan interest rate stated in the policy. For the amount of the lien in excess of

such cash value, the interest rate or interest rate methodology shall be disclosed in the form;

(c) Expense charges may be added to the lien;

(d) Due and unpaid premiums may be included in the lien after the automatic premium loan, if available, is exercised; and

(e) Access to the policy cash value may be restricted to the excess of the cash value over the sum of the lien and any other outstanding policy loans.

(4) Any premium charge or cost of insurance charge for the accelerated death benefit shall be disclosed to the insured. A premium charge or cost of insurance charge is prohibited for a qualifying event of the type described in Section 11(1)(a) of this administrative regulation.

(5) The company may deduct a reasonable expense charge for accelerating the death benefit and shall state the maximum expense charge in the form.

(6) If any index used in determining the accelerated death benefit is discontinued, the company shall use an appropriate substitute index subject to the approval of the executive director.

(7) The form or policy shall not:

(a) Provide that the insured forfeits the remainder of the policy death benefit upon acceleration of part of the policy death benefit.

(b) Place an aggregate limit provision that caps the accelerated death benefits payable for all policies issued by the company and its subsidiaries and affiliates.

(c) Require that the accelerated death benefit will be provided only if the policy would remain in force for a specific period of time following acceleration. However, the option may exclude from acceleration any term insurance coverage scheduled to terminate prior to the end of the period used to define a qualifying event of the type described in Section 11(1)(a) of this administrative regulation.

(d) Contain any restrictions on the use of the accelerated death benefit proceeds.

(8) A form with an accelerated death benefit shall include an option at the time of acceleration:

(a) To reduce the accelerated death benefit payment by an amount actuarially determined to pay the remaining premiums; or

(b) To continue to pay premiums to keep the policy in force.

Section 6. Effect of Benefit Payment on other Benefit Provisions. (1) Prior to or concurrent with the election to accelerate the policy death benefits, the owner and any irrevocable beneficiary shall be given a statement demonstrating the effect of the acceleration of the payment of death benefits on the cash value, death benefit, premium, cost of insurance charges, and policy loans, including policy liens, of the particular policy involved. The statement shall display any premium or cost of insurance charges necessary to continue coverage following the acceleration, and shall display all expense and interest charges associated with accelerating the death benefit. Statements for use with liens shall say that future due and unpaid premiums or cost of insurance charges may be included in the lien if the provision so provides. The statement shall be based only on guaranteed values and shall not show any projected or non-guaranteed values. The statement shall include a disclosure that receipt of an accelerated death benefit may affect eligibility for Medicaid or other government benefits or entitlements and may have income tax consequences.

(2) The form shall describe the effect of acceleration on premiums, cost of insurance charges, cash values and loan values, as applicable.

(3) The form shall describe the effect that acceleration of death benefits will have on coverage on another insured under the policy.

(4) When a part of the death benefit remains after payment of the accelerated death benefit, the following requirements shall apply:

(a) Where the accelerated death benefit is paid under a present value calculation, the policy shall be modified by an endorsement, which includes a statement of cash values, policy loans, premiums, cost of insurance charges, and death benefits following acceleration;

(b) The dividends or non-guaranteed elements credited shall not discriminate between policies whose death benefits have been reduced through acceleration and policies originally issued in the

amount of the reduced death benefits; and

(c) The accidental death benefit provision, if any, in the policy shall not be affected by the payment of the accelerated death benefit.

Section 7. Exclusions or Restrictions. The accelerated death benefit shall not contain exclusions or restrictions that are not also exclusions or restrictions in the policy.

Section 8. Incontestability. The accelerated death benefit shall be incontestable on the same, or on a more favorable basis, as the individual policy.

Section 9. Payment Options. (1) The payment options shall include the option to receive the accelerated death benefit payment in a lump sum, and may include an option to receive the benefit in periodic payments for a period certain. Periodic payments based on the continued survival or institutional confinement of the insured are prohibited.

(2) The amount payable as a lump sum shall be at least equal to the acceleration percentage multiplied by the difference between the current policy cash value and any outstanding policy loans. The current policy cash value shall include any termination dividend payable on the surrender of the policy.

(3) The form shall specify what occurs if the insured dies before all payments of the accelerated death benefit are made. If the present value of remaining payments is paid, the interest rate used to calculate any present value of the settlement option shall be that assumed in calculating the original payments.

(4) If the insured dies after the owner elects to receive accelerated death benefits but before any such benefits are received, the election shall be cancelled and the death benefit paid pursuant to the policy.

Section 10. Payment Procedures. (1) The procedures required to accelerate the death benefit of the policy shall be specified in the form. The procedures specified shall be at least as favorable as the following:

(a) If the company requires the filing of a proof of eligibility claim form, the company shall provide the claim form within fifteen (15) days of the acceleration request. If the claim form is not furnished within fifteen (15) days, it is considered that the claimant complied with the claim requirements if the claimant submits written proof covering the occurrence, the character and the extent of the occurrence for which claim is made;

(b) The company may reserve the right to require a second or third medical opinion to confirm benefit eligibility. The second or third medical opinions shall be provided at the company's expense. The second medical opinion may include a physical examination by a physician designated by the company. In the case of conflicting opinions, eligibility for benefits shall be determined by a third medical opinion that is provided by a physician that is mutually acceptable to the insured and the company.

(c) The accelerated death benefit shall be paid to the owner or owner's estate while the insured is living, unless the benefit has been otherwise assigned or designated by the owner;

(d) Prior to the payment of the accelerated death benefit, the company shall obtain from any assignee or irrevocable beneficiary a signed acknowledgement of concurrence for payout. If the company paying the accelerated death benefit is itself the assignee under the policy, no acknowledgement is required; and

(e) Payment of the accelerated death benefit is due immediately upon receipt of the due written proof of eligibility. Companies are subject to the requirements of KRS 304.12-235 with respect to any delay in processing requests to accelerate the payment of death benefits.

Section 11. Qualifying Events. (1) A qualifying event may, at the option of the company, include one or more of the following:

(a) A medical condition that requires extraordinary medical intervention, such as major organ transplant or continuous artificial life support, without which the insured would die;

(b) A condition that usually requires continuous confinement in an institution, as defined in the form, and the insured is expected to

remain there for the rest of his or her life;

(c) A specified medical condition that, in the absence of extensive or extraordinary medical treatment, would result in a drastically limited life span; or

(d) A chronic illness defined as permanent inability to perform a specified number of activities of daily living without substantial assistance from another individual, or permanent severe cognitive impairment; or both.

(2) The form shall specify the terms and conditions applicable to each qualifying event.

(3) The form shall not require that the cause of a qualifying event first manifest itself or be diagnosed after issuance of the individual policy or form.

(4) The form shall not include a waiting period requirement.

(5) A requirement that the individual policy or form be in force past the incontestable period is prohibited.

Section 12. Reinstatement. The form shall include a reinstatement provision on the same, or more favorable, terms as contained in the policy.

Section 13. Termination. (1) The form shall include the following termination conditions:

(a) Upon written request;

(b) Upon termination of the policy; or

(c) Upon nonpayment of any separate premium or cost of insurance charge for the accelerated death benefit, in accordance with the provisions of the form or the policy.

(2) The form may state that the accelerated death benefit may terminate when a nonforfeiture benefit becomes effective under the policy.

(3) The form shall state that termination shall not prejudice the payment of benefits for any qualifying event that occurred while the form was in force.

Section 14. Effective Date. The requirements, implementation, and enforcement of this regulation shall begin on December 1, 2007.

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

TIMOTHY J. LEDONNE, Commissioner

JULIE MIX MCPEAK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007, 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 until July 2, 2007. 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:** DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards and procedures for life insurance policies that have an accelerated death benefit, including form filing requirements and consumer protection disclosures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that life insurance policies with accelerated death benefits meet minimum benefit standards and are offered appropriately to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides standards and procedures for life insurance policies with accelerated death benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will standardize form filings and disclosures to consumers required by 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 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 regulation will affect the insurers that offer life products with accelerated death benefits in Kentucky.

(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: Regulated entities will be required to calculate and present life insurance accelerated death benefits in accordance with standardized procedures, and to certify compliance with the regulation annually, using their existing actuarial resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: The initial cost to implement this administrative regulation will be minimal.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementing and enforcing this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance products with accelerated death benefits in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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:

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Public Protection**  
**Office of Insurance**  
**Life Insurance Division**  
**(New Administrative Regulation)**

**806 KAR 12:170. Life insurance disclosures.**

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation requires insurers to deliver information to purchasers of life insurance that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance and Annuities Buyer's Guide published by the Commonwealth of Kentucky Office of Insurance.

(2) "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(3) "In force illustration" is defined in 806 KAR 12:140.

(4) "Nonguaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(5) "Policy data" means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year

or a series of designated policy years of the following information:

(a) Illustrated annual, other periodic, and terminal dividends;

(b) Premiums;

(c) Death benefits;

(d) Cash surrender values, outstanding policy loans, current policy loan interest rate, and endowment benefits.

(6) "Policy summary" means a separate document describing the elements of the policy, including, but not limited to:

(a) A permanently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION;

(b) The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary;

(c) The full name and home office or administrative office address of the life insurance company issuing the policy;

(d) The generic name of the basic policy and each rider;

(e) The following amounts, where applicable, for the first ten (10) policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns; including at least an age from sixty (60) through sixty-five (65) and policy maturity. Amounts shall be listed in total, not on a per thousand or per unit basis:

1. The annual premium for the basic policy;

2. The annual premium for each optional rider;

3. The amount payable upon death at the beginning of the policy year under the basic policy with additional benefits for each rider shown separately. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class[.];

4. The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and

5. Any endowment amounts payable under the policy that are not included under cash surrender values above;

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall state that the annual percentage rate will be determined in accordance with the provisions of the policy and the applicable law; and

(g) The day on which the policy summary is prepared.

Section 2. Application. (1) Except for the exemptions specified in Section 2(2) of this administrative regulation, this administrative regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This administrative regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies.

(2) This administrative regulation shall not apply to:

(a) Individual and group annuity contracts;

(b) Credit life insurance;

(c) Group life insurance;

(d) Life insurance policies issued in connection with pension and welfare plans which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended; or

(e) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

Section 3. Duties of Insurers. (1) Requirements for New Issues.

(a) The insurer shall provide the Buyer's Guide to all prospective purchasers at the time of application.

(b) The insurer shall provide a policy summary to prospective purchasers no later than the time of delivery of the policy.

(2) Requirements Applicable to Existing Policies.

(a) Upon request by the policyowner, the insurer shall furnish the policy data.

1. Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary.



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2. The insurer may charge a reasonable fee for the policy data, not to exceed ten (10) dollars.

(b) If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies, it shall notify each affected policy owner of the change and its effect on the policy no later than the date of the first payment on the new basis. This requirement shall not apply to policies for which the death benefit under the basic policy on the date of notice does not exceed \$5,000.

(c) If the insurer makes a material revision in the terms and conditions which will limit its right to change any nonguaranteed factor, it shall notify each affected policy owner of the change no later than the first policy anniversary following the revision.

Section 4. General Rules. (1) Prior to commencing a life insurance sales presentation, an agent shall inform the prospective purchaser that he or she is acting as a life insurance agent. The agent shall inform the prospective purchaser in writing of the full name of the insurance company which the agent represents. In sales situations in which an agent is not involved, the insurer shall identify its full name.

(2) An insurance producer marketing insurance products shall not use any title or designation, including but not limited to, "financial planner," "investment advisor," "financial consultant," or "financial counseling" to imply that he or she is engaged in an advisory or consulting business in which compensation is unrelated to sales. This provision is not intended to preclude persons who are recognized as having a financial planning or consultant designation from using the designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

(3) Any reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements. If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in any reference to nonguaranteed elements.

Section 5. Failure to Comply. (1) Failure of an insurer to provide or deliver the Buyer's Guide, an in force illustration, a policy summary, or policy data shall constitute an omission that misrepresents the benefits, advantages, conditions or terms of an insurance policy.

Section 6. Effective Date. The requirements, implementation, and enforcement of this regulation shall begin on December 1, 2007.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference: The Life Insurance and Annuities Buyer's guide, Commonwealth of Kentucky.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. Forms may also be obtained on the offices' internet web site at: <http://doi.ppr.ky.gov/kentucky>.

LLOYD R. CRESS, Deputy Secretary  
For TERESA J. HILL, Secretary  
TIMOTHY J. LEDONNE, Commissioner  
JULIE MIX MCPEAK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in

writing by June 19, 2007, 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 until July 2, 2007. 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to life insurance buyers that will help the buyer select the most appropriate insurance for the buyer's needs and help the buyer understand the policy features.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for life insurance disclosures to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.12-020, 304.12-030, and 304.12-230 require insurance marketing information to be accurate and not deceptive or misleading. This administrative regulation will standardize life insurance disclosures to the consumer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation formalizes a procedure for complying with the statute.

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

(a) How the amendment will change this existing administrative regulation: 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 regulation will effect the approximately 520 insurers that are licensed to offer life insurance in Kentucky.

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: Regulated entities will be required to deliver information to the buyers of life insurance products in compliance with this regulation, using their existing resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for



regulated entities.

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

(a) Initially: The cost will be minimal.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for 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. There will be no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Insurance

Life Insurance Division

(New Administrative Regulation)

#### 806 KAR 15:060. Universal life insurance.

RELATES TO: KRS 304.6-120, 304.6-140, 304.6-145, 304.6-150, 304.14-120, 304.15-040, 304.15-300, 304.15-310, 304.15-340, 304.15-342

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to

make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation supplements existing regulations on life insurance policies in order to accommodate the development and issuance of universal life insurance policies.

Section 1. Definitions. (1) "Cash surrender value" means the net cash surrender value plus any amounts outstanding as policy loans.

(2) "Executive director" is defined in KRS 304.1-050(1).

(3) "Fixed premium universal life insurance policy" means a universal life insurance policy other than a flexible premium universal life insurance policy.

(4) "Flexible premium universal life insurance policy" means a universal life insurance policy which permits the policyowner to vary, independently of each other, the amount or timing of one (1) or more premium payments or the amount of insurance.

(5) "Guaranteed maturity premium for flexible premium universal life insurance policies" means that level gross premium, paid at issue and periodically thereafter over the period which premiums are allowed to be paid, which will mature the policy on the latest maturity date, if any, permitted under the policy (otherwise at the highest age in the valuation mortality table), for an amount which is in accordance with the policy structure.

(6) "Interest-indexed universal life insurance policy" means any universal life insurance policy where the interest credits are linked to an external reference.

(7) "Net cash surrender value" means the maximum amount payable to the policyowner upon surrender.

(8) "Policy value" means the amount to which separately identified interest credits and mortality, expense, or other charges are made under a universal life insurance policy.

(9) "Universal life insurance policy" is defined in 806 KAR 12:080.

Section 2. Application. This regulation applies to all individual universal life insurance policies except variable universal life insurance policies.

Section 3. Valuation. (1) Requirements: The minimum valuation standard for universal life insurance policies shall be the Commissioners Reserve Valuation Method, as described below for such policies, and the tables and interest rates specified below. The terminal reserves for the basic policy and riders for which premiums are not paid separately as of any policy anniversary shall be equal to the net level premium reserves less (C) and (D), where:

Reserves by the net level premium method shall be equal to ((A)-(B)) r where (A), (B) and "r" are as defined below:

(a) Is the present value of all future guaranteed benefits at the date of valuation.

(b) Is the quantity  $PVFB_{ax+t}/ax$ :

Where PVFB is the present value of all benefits guaranteed at issue assuming future guaranteed maturity premiums are paid by the policyowner and taking into account all guarantees contained in the policy or declared by the insurer.

$ax$  and  $ax+t$  are present values of an annuity of one per year payable on policy anniversaries beginning at ages  $x$  and  $x+t$ , respectively, and continuing until the highest attained age which a premium may be paid under the policy. The letter "x" is defined as the issue age and the letter "t" is defined as the duration of the policy.

The guaranteed maturity premium is calculated at issue based on all policy guarantees at issue, excluding guarantees linked to an external referent. The guaranteed maturity premium for fixed premium universal life insurance policies shall be the premium defined in the policy which at issue provides the minimum policy guarantees.

The letter "r" is equal to one (1), unless the policy is flexible premium policy and the policy value is less than the guaranteed maturity fund, in which case "r" is the ratio of the policy value to the guaranteed maturity fund.

The guaranteed maturity fund at any duration is that amount

which, together with future guaranteed maturity premiums, will mature the policy based on all policy guarantees at issue.

(c) Is the quantity  $r((a)-(b))ax+t/ax$  where (a)-(b) is as described in KRS 304.6-150(1) for the plan of insurance defined at issue by the guaranteed maturity premiums and all guarantees contained in the policy or declared by the insurer.

$ax+t$  and  $ax$  are defined in (1)(b) above.

(d) Is the sum of any additional quantities analogous to (1)(c) which arise because of structural changes in the policy, with each quantity being determined on a basis consistent with that of (1)(c) using the maturity date in effect at the time of the change.

The guaranteed maturity premium, the guaranteed maturity fund and (1)(b) above shall be recalculated to reflect any structural changes in the policy. This recalculation shall be done in a manner consistent with descriptions above.

Future guaranteed benefits are determined by (1) projecting the greater of the guaranteed maturity fund and the policy value, taking into account future guaranteed maturity premiums, if any, and using all guarantees of interest, mortality and expense deductions, contained in the policy or declared by the insurer; and (2) taking into account any benefits guaranteed in the policy or by declaration which do not depend on the policy value.

All present values shall be determined using (i) an interest rate or rates specified by KRS 304.6-145(2) for policies issued in the same year; (ii) the mortality rates specified by the KRS 304.6-140 for policies issued in the same year or contained in such other table as may be approved by the executive director for this purpose; and (iii) any other tables needed to value supplementary benefits provided by a rider which is being valued together with the policy.

(2) Alternative Minimum Reserve. If, in any policy year, the guaranteed maturity premium on any universal life insurance policy is less than the valuation net premium for such policy, calculated by the valuation method actually used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such contract shall be the greater of (a) or (b), where (a) or (b) below:

(a) Is the reserve calculated according to the method, the mortality table and the rate of interest actually used; and

(b) Is the reserve calculated according to the method actually used but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the guaranteed maturity premium in each policy year for which the valuation net premium exceeds the guaranteed maturity premium.

For universal life insurance reserves on a net level premium basis, the valuation net premium is  $PVFB ax$  and for reserves on a Executive Directors Reserve Valuation Method, the valuation net premium is  $PVFB+(a)-(b)$

$ax ax$

Section 4. Nonforfeiture. (1) Minimum cash surrender values for flexible premium universal life insurance policies. minimum cash surrender values for flexible premium universal life insurance policies shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately. The following requirements pertain to a basic policy and any benefits and riders for which premiums are not paid separately. The minimum cash surrender value before adjustment for indebtedness and dividend credits available on a date as of which interest is credited to the policy shall be equal to the accumulation to that date of the premiums paid minus the accumulations to that date of: (i) the benefit charges, (ii) the averaged administrative expense charges for the first policy year and any insurance-increase years, (iii) actual administrative expense charges for other years, (iv) initial and additional acquisition expense charges not exceeding the initial or additional expense allowances, respectively,

(v) any service charges actually made excluding charges for cash surrender or election of a paid-up nonforfeiture benefit and

(vi) any deductions made for partial withdrawals; all accumulations being at the actuarial rate or rates of interest at which interest credits have been made unconditionally to the policy or have been made unconditionally, but for which the conditions have since been met, and minus any unamortized unused initial and additional expense allowances. Interest on the premiums and on all charges

referred to in items (i) through (iv) above shall be accumulated from and to such dates as are consistent with the manner in which interest is credited in determining the policy value. The benefit charges shall include the charges made for mortality and any charges made for riders or supplementary benefits for which premiums are not paid separately. If benefit charges are substantially level by duration and develop low or no cash values, then the executive director shall have the right to require higher cash values unless the insurer provides adequate justification that the cash values are appropriate in relation to the policy's other characteristics. The administrative expense charges shall include charges per premium payment, charges per dollar of premium paid, periodic charges per thousand dollars of insurance, periodic per policy charges, and any other charges permitted by the policy to be imposed without regard to the policyowner's request for services. The averaged administrative expense charges for any year shall be those which would have been imposed in that year if the charge rate or rates for each transaction or period within the year had been equal to the arithmetic average of the corresponding charge rates which the policy states will be imposed in policy years two (2) through twenty (20) in determining the policy value. The initial acquisition expense charges shall be the excess of the expense charges, other than service charges, actually made in the first policy year over the averaged administrative expense charges for that year. Additional acquisition expense charges shall be the excess of the expense charges, other than the service charges, actually made in an insurance-increase year over the averaged administrative expense charges for that year. An insurance-increase year shall be the year beginning on the date of increase in the amount of insurance by policyowner request or by the terms of the policy. Service charges shall include charges permitted by the policy to be imposed as the result of a policyowner's request for a service by the insurer or of special transactions. The initial expense allowance shall be the allowance provided by KRS 304.15-342(1) for a fixed premium, fixed benefit endowment policy with a face amount equal to the initial face amount of the flexible premium universal life insurance policy, with level premiums paid annually until the highest attained age at which a premium may be paid under the flexible premium universal life insurance policy, and maturing on the latest maturity date permitted under the policy. If there is no maturity date in the policy, then the highest age in the valuation mortality table shall be used. The unused initial expense allowance shall be the excess of the initial expense allowance over the initial acquisition expense charges as defined above. If the amount of insurance is subsequently increased upon request of the policyowner or by the terms of the policy, an additional expense allowance and an unused additional expense allowance shall be determined on a basis consistent with the above and with KRS 304.15-342(5) using the face amount and the latest maturity date permitted at the time under the policy. The unamortized unused initial expense allowance during the policy year beginning on the policy anniversary at age  $x+t$  where "x" is the same issue age shall be the unused initial expense allowance multiplied by  $ax+t$  where  $ax+t$  and  $ax$  are present values of an annuity of one (1) per year payable on policy anniversaries beginning at ages  $x+t$  and  $x$ , respectively, and continuing until the highest attained age at which a premium may be paid under the policy, both on the mortality and interest bases guaranteed in the policy. An unamortized unused additional expense allowance shall be the unused additional expense allowance multiplied by a similar ratio of annuities, with  $ax$  replaced by an annuity beginning on the date as of which the additional expense allowance was determined.

(2) Minimum Cash Surrender Values for Fixed Premium Universal Life Insurance Policies. For fixed premium universal life insurance policies, the minimum cash surrender values shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately. The following requirements pertain to a basic policy and any benefits and riders for which premiums are not paid separately. The minimum cash surrender value before adjustment for indebtedness and dividend credits available on a date as of which interest is credited to the policy shall be equal to  $[(A)-(B)-(C)-(D)]$ , where:

(a) Is the present value of all future guaranteed benefits.

(b) Is the present value of future adjusted premiums. The ad-

justed premiums are calculated as described in KRS 304.15-342. The nonforfeiture net level premium is equal to the quantity PVFB, ax:

Where PVFB is the present value of all benefits guaranteed at issue assuming future premiums are paid by the policyowner and all guarantees contained in the policy or declared by the insurer.

ax is the present value of an annuity of one per year payable on policy anniversaries beginning at age x and continuing until the highest attained age at which a premium may be paid under the policy.

(c) Is the present value of any quantities analogous to the nonforfeiture net level premium which arise because of guarantees declared by the insurer after the issue date of the policy. ax shall be replaced by an annuity beginning on the date as of which the declaration became effective and payable until the end of the period covered by the declaration.

(d) Is the sum of any quantities analogous to (B) which arise because of structural changes in the policy.

Future guaranteed benefits are determined by (1) projecting the policy value, taking into account the future premiums, and using all guarantees of interest, mortality, expense deductions, etc., contained in the policy or declared by the insurer; and (2) taking into account any benefits guaranteed in the policy or by declaration which do not depend on the policy value.

All present values shall be determined using (i) an interest rate specified by KRS 304.15-342(9) for policies issued in the same year and (ii) the mortality rates specified by the KRS 304.15-342(8) for policies issued in the same year or contained in such other table as may be approved by the executive director for this purpose.

(3) Minimum Paid-Up Nonforfeiture Benefits. If a universal life insurance policy provides for the optional election of a paid-up nonforfeiture benefit, it shall be such that its present value shall be at least equal to the cash surrender value provided for by the policy on the effective date of the election. The present value shall be based on mortality and interest standards at least as favorable to the policyowner as (1) in the case of a flexible premium universal life insurance policy, the mortality and interest basis guaranteed in the policy for determining the policy value, or (2) in the case of a fixed premium policy the mortality and interest standards permitted for paid-up nonforfeiture benefits by KRS 304.15-342(8) and (9). In lieu of the paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits, or, if applicable, a greater amount or earliest payment of endowment benefits.

Section 5. Mandatory Policy Provisions. The policy shall provide the following:

(1) The policy owner shall be sent, at least annually, a report which will inform the policyowner of the status of the policy. The end of the current report period shall not be more than three months prior to the date of the mailing of the report. Specific requirements of this report are detailed in Section 7 of this administrative regulation.

(2) Notice that the policyholder may request an illustration of current and future benefits and values.

(3) Guarantees of minimum interest credits and maximum mortality and expense charges. All values and data shown in the policy shall be based on guarantees. No figures based on nonguarantees shall be included in the policy.

(4) A general description of the calculation of cash surrender values including the following information:

(a) The guaranteed maximum expense charges and loads.

(b) Any limitation on the crediting of additional interest. Interest credits shall not remain conditional for a period longer than twenty-four (24) months.

(c) The guaranteed minimum rate or rates of interest.

(d) The guaranteed maximum mortality charges.

(e) Any other guaranteed charges.

(f) Any surrender or partial withdrawal charges.

(5) If the policyowner has the right to change the basic coverage, any limitation on the amount or timing of such change shall be

stated in the policy. If the policyowner has the right to increase the basic coverage, the policy shall state whether a new period of contestability or suicide is applicable to the additional coverage.

(6) Written notice to be sent to the policyowner's last known address at least thirty (30) days prior to termination of coverage. A flexible premium policy shall provide for a grace period of at least thirty (30) days after lapse. Unless otherwise defined in the policy, lapse shall occur on that date on which the net cash surrender value first equals zero.

(7) If there is a misstatement of age or sex in the policy, the amount of death benefit shall be that which would be purchased by the most recent mortality charge at the correct age or sex. The executive director may approve other methods which are deemed satisfactory.

(8) If a policy provides for a maturity date, end date, or similar date, then the policy shall also contain a statement, in close proximity to that date, that it is possible that coverage may not continue to the maturity date even if scheduled premiums are paid in a timely manner.

Section 6. Disclosure of information about the policy being applied for shall follow the standards in 806 KAR 12:140.

Section 7. Periodic Disclosure to Policyowner. (1) The policy shall provide that the policyowner shall be sent, without charge at least annually, a report which shall inform the policyowner of the status of the policy. The end of the current report period shall not be more than three (3) months prior to the date of the mailing of the report.

(2) The report shall include the following:

(a) The beginning and end of the current report period;

(b) The policy value at the end of the previous report period and at the end of the current report period;

(c) The total amounts which have been credited or debited to the policy value during the current report period, identifying each by type;

(d) The current death benefit at the end of the current report period on each life covered by the policy;

(e) The net cash surrender value of the policy as of the end of the current report period;

(f) The amount of outstanding loans, if any, as of the end of the current report period;

(g) For fixed premium policies, if, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report;

(h) For flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

Section 8. Interest-indexed Universal Life Insurance Policies. (1) Filing requirements. The following information shall be submitted in connection with any filing of interest-indexed universal life insurance policies. This information shall be submitted in addition to the requirements of KRS 304.14-120. All information received shall be treated confidentially to the extent permitted by law.

(a) A description of how the interest credits are determined, including:

1. A description of the index;

2. The relationship between the value of the index and the actual interest rate to be credited;

3. The frequency and timing of determining the interest rate; and

4. The allocation of interest credits, if more than one rate of interest applies to different portions of the policy value;

(b) The insurer's investment policy, which includes a description of the following:

1. How the insurer addressed the reinvestment risks;

2. How the insurer plans to address the risk of capital loss on cash outflows;

3. How often the insurer plans to address the risk that appropriate investments may not be available or not available in sufficient quantities;

4. How the insurer plans to address the risk that the indexed interest rate may fall below the minimum contractual interest rate guaranteed in the policy;

5. The amount and type of assets currently held for interest indexed policies;

6. The amount and type of assets expected to be acquired in the future;

(c) If policies are linked to an index for a specified period less than to the maturity date of the policy, a description of the method used to determine interest credits upon the expiration of such period;

(d) A description of any interest guarantee in addition to or in lieu of the index; and

(e) A description of any maximum premium limitations and the conditions under which they apply.

(2) Reporting Requirements

(a) Annually, every insurer shall submit a Statement of Actuarial Opinion by the insurer's actuary similar to the example contained in Section 8(3) of this administrative regulation.

(b) Annually, every insurer shall submit a description of the amount and type of assets currently held by the insurer with respect to its interest-indexed policies.

(c) Prior to implementation, every domestic insurer shall submit a description of any material change in the insurer's investment strategy or method of determining the interest credits. A change is considered to be material if it would affect the form or definition of the index or if it would significantly change the amount or type of assets held for interest-indexed policies.

(3) Statement of Actuarial Opinion for Interest-Indexed Universal Life Insurance Policies shall state as follows:

I, \_\_\_\_\_, am (position or relationship to Insurer) for the XYZ Life Insurance Company (the Insurer) in the state of \_\_\_\_\_. (State of Domicile of Insurer) I am a member of the American Academy of Actuaries (or if not, state other qualifications to sign annual statement actuarial options). I have examined the interest-indexed universal life insurance policies of the Insurer in force as of December 31, 20XX, encompassing \_\_\_\_\_ number of policies and \$\_\_\_\_\_ of insurance in force. I have considered the provisions of the policies. I have considered any reinsurance agreements pertaining to such policies, the characteristics of the identified assets and the investment policy adopted by the Insurer as they affect future insurance and investment cash flows under such policies and related assets. My examination included such tests and calculations as I considered necessary to form an opinion concerning the insurance and investment cash flows arising from the policies and related assets. I relied on the investment policy of the Insurer and on projected investment cash flows as provided by \_\_\_\_\_, Chief Investment Officer of the Insurer. The tests were conducted under various assumptions as to future interest rates, and particular attention was given to those provisions and characteristics that might cause future insurance and investment cash flows to vary with changes in the level of prevailing interest rates. In my opinion, the anticipated insurance and investment cash flows referred to above make a good and sufficient provision for the contractual obligations of the Insurer under these insurance policies. \_\_\_\_\_ Signature of Actuary.

LLOYD R. CRESS, Deputy Secretary  
For TERESA J. HILL, Secretary  
TIMOTHY J. LEDONNE, Commissioner  
JULIE MIX MCPEAK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007, 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 until July 2, 2007. 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation supplements existing regulations on life insurance policies to accommodate the development and issuance of universal life insurance policies, to provide for the valuation of policy benefits, to require annual written status reports, and to require actuarial certification that the insurance and investment cash flows are financially sound.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that universal life policies are developed in a financially sound manner and include annual disclosures to the policyowner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation will create financial standards for developing universal life products, and require annual baseline status disclosure to the policy owner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will create actuarial and contract provision standards for universal life policies, which should make those products stronger from a solvency perspective. It also provides for consumer protection disclosures about policy benefits which should help the consumer understand what the product does and does not include.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers and, 43,000 agents that are licensed to offer life products in Kentucky.

(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: Regulated entities will be required to calculate life insurance values and reserves in accordance with standardized actuarial procedures, and, in some instances, to certify compliance with the regulation annually, using their existing actuarial resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has

not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: The initial cost to implement this administrative regulation will be minimal.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementing and enforcing this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department of Public Protection  
Office of Insurance  
Life Insurance Division  
(New Administrative Regulation)

806 KAR 15:070: Annuity nonforfeiture.

RELATES TO: 304.15-365

STATUTORY AUTHORITY: KRS 304.2-110, 304.15-365

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.15-365(7) authorizes the executive director to promulgate administrative regulations to implement the statute and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the executive director determines adjustments are justified. This administrative regulation adopts rules to implement the provisions of KRS 304.15-365(4).

Section 1. Definitions. (1) "Basis" means:

(a) When used in the context of an initial or redetermination method, the specified period over which an average is computed that produces the value of the five-year Constant Maturity Treasury (CMT) Rate. The same basis shall apply to all equity-indexed benefits and the non equity-indexed benefit, if any.

1. The basis may use a specified period that is determined by the level of change in the CMT rate, or any other date dependent methodology adopted by the NAIC and approved by the executive director. A specifically excluded method is one that defines the nonforfeiture rate as the lowest rate in a specified time period. A method based upon changes in CMT levels must move up or down in an identical manner with changes in interest rates, subject to statutory minimums and maximums.

2. If the basis uses a specified period determined by the level of change in the CMT rate:

a. The nonforfeiture rate applicable at the time this subsection is first utilized for a contract form shall be determined by a method using a specified period or another approved date dependent methodology.

b. A symmetrical range shall be defined that will determine when the rate shall be updated. The maximum allowable range shall be plus or minus fifty (50) basis points.

c. At the beginning of each modal period, a potential nonforfeiture rate shall be calculated using the method in Subsection (1)(a)2.a. of this section, without incorporating any caps or floors.

d. If the difference between the potential nonforfeiture rate and the current initial nonforfeiture rate is less than or equal to the range, the current nonforfeiture rate shall not be updated.

e. If the difference between the potential nonforfeiture rate and the current nonforfeiture rate is more than the range, the current nonforfeiture rate shall be updated to be equal to the potential nonforfeiture rate adjusted for rounding and any caps or floors.

(b) When used in the context of equity-indexed benefits, the point in time used for establishing the parameters incorporated into the calculation of the value of the equity-indexed options. These parameters include the risk free rate, dividend yield, index volatility, prior index values if the option is path dependent, and any other relevant parameters.

(2)(a) "Equity-indexed benefits" means a benefit in an annuity contract in which the value of the benefit is determined using an interest crediting rate based on the performance on an equity-based index and contract parameters.

(b) "Equity indexed benefits" does not mean variable benefits of separate account variable annuities and indexed guaranteed separate account contracts purchased by institutional buyers.

(3) "Executive director" is defined in KRS 304.1-050(1).

(4) "Index term" means each period of time until the next indexed interest crediting date.

(5) "Initial method" means the basis upon which the initial nonforfeiture rate is established and the period for which it applies. The

period may last for the entire duration of the contract.

(6) "Initial nonforfeiture rate" means the nonforfeiture rate applicable at contract issue.

(7) "Minimum nonforfeiture amount" is defined in KRS 304.15-365(4)(a).

(8) "Modal period" means the period the company specifies during which the current nonforfeiture rate will remain fixed.

(9) "Nonforfeiture rate" is defined in KRS 304.15-365(5).

(10) "Redetermination method" means the redetermination date, basis and period for all future redetermination nonforfeiture rates.

(11) "Redetermination nonforfeiture rate" means the nonforfeiture rate applicable at redetermination.

Section 2. Initial Method. (1) The initial method shall be filed with the executive director in accordance with jurisdictional filing and approval requirements.

(2) Changes to the initial method are allowed once per calendar year. Any changes to the initial method shall be filed with the executive director in accordance with KRS 304.14-120. A change in initial method would be applicable only to new contracts or new certificates issued subsequent to the effective date of the change in method.

(3) The initial method is not required to be disclosed in the contract form.

(4) The initial nonforfeiture rate is not required to be disclosed in the contract form unless redetermination is used.

(5) The minimum nonforfeiture parameters need not be disclosed in the contract unless they are utilized in the calculation of the guaranteed minimum value of the contract.

Section 3. Redetermination Method. (1) If redetermination is used, the method shall be disclosed in the contract form or certificate.

(2) Changes in the redetermination method for future issues or certificates shall be filed in accordance with 304.14-120.

Section 4. Nonforfeiture Rate and Minimum Nonforfeiture Amount. (1) An annuity contract or certificate without an equity-indexed benefit shall have one nonforfeiture rate and one minimum nonforfeiture amount applicable to the entire contract.

(2) An annuity contract or certificate with equity-indexed benefits may have more than one nonforfeiture rate applicable to the contract or certificate subject to the following:

(a) If the contract has a non equity-indexed benefit, the nonforfeiture interest rate applicable to the non equity-indexed benefit shall be determined in compliance with KRS 304.15-365(5) without any consideration of any equity indexed feature.

(b) If an additional reduction is elected for equity-indexed benefits, reduced nonforfeiture interest rates may apply to each equity-indexed benefit for which the additional reduction is elected in compliance with KRS 304.15-365(6) and Section 5 of this administrative regulation.

(c) The minimum nonforfeiture amount for the contract is determined by calculating a nonforfeiture amount, without any reduction for indebtedness to the company on the contract including interest due and accrued on the indebtedness, for each equity-indexed and non equity-indexed benefit using the nonforfeiture interest rates described in this subsection, summing the results, and then deducting any indebtedness to the company on the contract including interest due and accrued on the indebtedness.

(d) When contract value is transferred:

1. From a benefit, the benefit's minimum nonforfeiture amount is reduced by the benefit's minimum nonforfeiture amount prior to the transfer multiplied by the proportion of the benefit's contract value that is transferred;

2. To a benefit, the benefit's minimum nonforfeiture amount is increased by the sum of all reductions in minimum nonforfeiture amounts determined under subparagraph 1 of this paragraph multiplied by the proportion of total contract value that is transferred to that benefit;

3. For purposes of the calculations specified in subparagraphs 1. and 2. of this paragraph the contract value must first be reduced by any fees associated with the transfer.

(e) In the case of a withdrawal from a benefit in which the amount of withdrawal exceeds the benefit's nonforfeiture amount, the insurer shall treat the excess withdrawal in a manner at least as favorable to the contract holder as deducting the excess withdrawal from the nonforfeiture amounts of other benefits in order from lowest to highest nonforfeiture interest rate.

(f) Any contract charge or premium taxes paid by the company must be allocated to a benefit's minimum nonforfeiture amount based on the percentage of that benefit's contract value to the total contract value.

Section 5. Equity-indexed Benefits. (1) If a company chooses to take the additional reduction for an equity-indexed benefit, the company shall prepare a demonstration showing compliance with KRS 304.15-365(6).

(2) To demonstrate compliance a company shall:

(a) Calculate the annualized option cost for the equity-indexed benefit in the form of basis points for the entire Index Term as of the beginning of the Index Term.

1. In making the calculation, a company shall:

a. Use the equity-indexed benefit's guaranteed product features.

b. Use a basis representative of the point in time at the beginning of the current index term for the option cost. The company shall not change this basis during the index term.

c. Calibrate the method and parameters for the option cost to capital markets based option pricing.

2. A company shall not make adjustments for persistency, death, utilization.

(b) If the annualized option cost for the equity-indexed benefit is twenty-five (25) basis points or more, then the equity-indexed benefit provides substantive participation under KRS 304.15-365(6) and the company may take a reduction equal to the lesser of one hundred (100) basis points or the annual cost basis value.

(c) The company shall prepare an actuarial certification signed by a member of the American Academy of Actuaries that the reduction complies with KRS 304.15-365(6) at the time that the contract form is filed and submitted.

(d) The company shall annually prepare an actuarial certification in accordance with KRS 304.15-365(6) signed by a member of the American Academy of Actuaries with regard to ongoing compliance and submit it in conjunction with the filing of the annual statement.

(3) If the executive director determines that the additional reduction of up to one (100) hundred basis points for equity-indexed benefits has been inappropriately taken, the executive director may require the recalculation of all values for all affected policyholders without all or part of the additional reduction.

Section 6. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on December 1, 2007.

LLOYD R. CRESS, Deputy Secretary  
For TERESA J. HILL, Secretary  
TIMOTHY J. LEDONNE, Commissioner  
JULIE MIX MCPEAK, Executive Director

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007, at 9 a.m., ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007, 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 until July 2, 2007. 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: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth actuarial standards for minimum nonforfeiture benefits for annuities to implement the provisions of KRS 304.15-365.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set standards in accordance with KRS 304.15-365 and to provide for an actuarial certification of compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation implements the provisions of KRS 304.15-365 and standardizes the calculation of values and sets minimum nonforfeiture amounts for annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set the baseline actuarial requirements for annuities and require an actuarial certification of compliance with the regulation which adds a layer of consumer protection.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the insurers and agents that are licensed to offer annuity products in Kentucky.

(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: Regulated entities will be required to calculate the minimum nonforfeiture benefits for annuities in accordance with this regulation, using their existing actuarial resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities will not incur any additional cost as this regulation is a national standard.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes regulation across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: The initial cost to implement this administrative regulation will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis to implement this administrative regulation. What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementing and enforcing this administrative regulation.

(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. 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 Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. 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 regulation should be essentially revenue neutral.

(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 should be essentially revenue neutral.

(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 should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of May 8, 2007 Meeting

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 8, 2007 at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Robert Damron called the meeting to order, the roll call was taken. The minutes of the April 10, 2007 meeting were approved.

Present were:

**Members:** Senators Joey Pendleton, Richard "Dick" Roeding and Gary Tapp; and Representatives Robert Damron Danny Ford, Jimmie Lee, and Ron Weston.

**LRC Staff:** Dave Nicholas, Emily Caudill, Kara Daniel, Emily Harkenrider, Donna Little, Jennifer Beeler and Ellen Steinberg.

**Guests:** Richard Casey, Becky Gilpatrick, and Melissa Justice, Kentucky Higher Education Assistance Authority; Pamela Luce, Kentucky Department of Veterans Affairs; Sarah Ball Johnson and Katie Dunnigan, Kentucky State Board of Elections; Renelle Grubbs and Edna Lowery, Kentucky Community Crisis Response Board; Michael Burlison, Kentucky Board of Pharmacy; James Grawe, Dr. Ed Hall, and Claude Wagner, Kentucky Board of Veterinary Examiners; James Grawe and Claude Wagner, Kentucky Board of Licensed Professional Counselors; Morgain Sprague and Don Walker, Kentucky Department of Fish and Wildlife Resources; Justin Dearing, Sandy Gruzsky, Donna Marlin, Allan Bryant, Dale Burton, Dennis Giles, Mike Guffey, Tony Hatton, Michael Mullins, Lora Gowins, John Lyons, Lona Brewer, and Andrea Smith Department for Environmental Protection; Dana Fugazzi, Kathy Woods and Cass Napier, Transportation Cabinet; Kevin Brown, David Couch, Karen Dodd, and Mike Leadingham, Kentucky Board of Education; John Ackerson and John Forgy, Board of Tax Appeals; Michael Bennett, George Mann, Shane Peck, Tim House and Richard Peddicord, Office of Housing, Buildings and Construction; Carrie Banahan and Glenn Jennings, Department for Medicaid Services.

**The Administrative Regulation Review Subcommittee met on Tuesday, May 8, 2007 and submits this report:**

**Other Business:**

Senator Pendleton stated that he had received complaints that law enforcement officers had stopped farm vehicles on the roadways and threatened to issue citations for failure to comply with certain federal regulations. He stated that both state and federal law exempted farm vehicles from these requirements. A motion was made and seconded that the subcommittee review 601 KAR 1:005. Without objection, it was ordered that the subcommittee will review the administrative regulation at its June meeting.

**Administrative Regulations Reviewed by the Subcommittee:**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:  
Division of Student and Administrative Services: Authority**

11 KAR 4:080. Student aid applications. Richard Casey, general counsel, and Becky Gilpatrick, branch manager, represented the authority.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A and to correct typographical errors. Without objection, and with agreement of the agency, the amendments were approved.

**KHEAA Grant Programs**

11 KAR 5:033. KTG student eligibility requirements.

In response to a question by Co-Chair Roeding, Mr. Casey stated that this administrative regulation mirrored the federal requirements and required a borrower who defaulted on a federal loan to establish a satisfactory payment plan before eligibility for the Kentucky Tuition Grant program was restored.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CON-

FORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

11 KAR 5:034. CAP grant student eligibility.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

11 KAR 5:140. KTG award determination procedure.

**KHEAA Work-Study Program**

11 KAR 6:010. KHEAA Work-Study Program.

A motion was made and seconded to approve the following amendments: to amend Sections 4 to 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Early Childhood Development Scholarship Program**

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 16:070. Dual enrollment under consortium agreement.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GOVERNOR'S OFFICE: Kentucky Department of Veterans Affairs: Tuition Waiver Program**

17 KAR 1:020. Eligibility for tuition waiver programs related to veterans. Pamela Luce, field operations branch manager, represented the department.

In response to questions by Co-Chair Roeding, Ms. Luce stated that the department has taken steps to publicize the application requirements for tuition waiver by sending letters to affected schools and students, by issuing a press release, and by posting information on the department's Web site.

A motion was made and seconded to approve the following amendments: (1) to amend the title to more accurately reflect the subject matter of this administrative regulation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to provide the definition of "honorable discharge"; (4) to amend Section 2 to establish the application requirements for tuition waiver; (5) to amend Section 3 to provide that a certification shall be issued to an approved applicant and a written notification shall be issued if the application is denied; (6) to amend Section 4 to establish the application requirements for requesting an extension of tuition waiver pursuant to KRS 164.507 and 164.515; and (7) to amend Section 5 to comply with the drafting and format requirements of KRS Chapter 13A and to incorporate by reference the affidavit and application for extension request. Without objection, and with agreement of the agency, the amendments were approved.

**KENTUCKY STATE BOARD OF ELECTIONS: Statewide Voter Registration**

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists. Sarah Johnson, executive director, and Katie Dunnigan, general counsel, represented the board.

In response to a question by Co-Chair Roeding, Ms. Johnson

stated the board would forward the revised form to members of the legislature and post it on the board's Web site.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add definitions of "sale", "statewide voter registration database", and "voter registration list"; (2) to amend Sections 2, 3, 4, and 5 to correct terminology; (3) to amend Section 3 to delete repetitive language; and (4) to amend Sections 1 through 4, and 6 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Forms and Procedures**

31 KAR 4:100. Evaluation of precinct election officers.

In response to a question by Senator Tapp, Ms. Johnson stated this administrative regulation incorporated by reference a form that had been in use for years and no changes were made that would make it more difficult to obtain precinct officers.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (2) to amend Section 1 to correct a statutory citation; and (3) to amend Section 3 to correct punctuation. Without objection, and with agreement of the agency, the amendments were approved.

#### **GENERAL GOVERNMENT CABINET: Department of Military Affairs: Kentucky Community Crisis Response Board**

106 KAR 5:005. Definitions for 106 KAR Chapter 5. Renelle Grubbs, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 1 to add the term "membership committee", delete terms that are not used in the administrative regulations, and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 5:010. Application and renewal requirements for Response Team membership.

In response to a question by Senator Tapp, Ms. Grubbs stated that applicants for team membership were required to provide three references and undergo a background check.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Section 1 to clarify the number of members on and the role of the membership committee; (4) to amend Sections 2 and 3 to clearly state the requirements for response team membership and the application process, and to delete repetitive language; (5) to amend the material incorporated by reference to use language consistent with this administrative regulation; and (6) to amend the TITLE, and Sections 1, 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.

106 KAR 5:020. KCCRT educational and training requirements.

In response to a question by Co-Chair Roeding, Ms. Grubbs stated that the board had never had a problem getting team members. She stated that 15 percent of the volunteer members were employed in faith-based occupations, 22 percent provided behavioral health services, and other members came from law enforcement, fire and emergency medical services, medical health, and emergency management.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a statutory citation; (2) to amend Section 1 to clearly state the number of members on and the role of the education and training

committee; (3) to amend Section 4 to clearly state the education and training requirements for team members; (4) to amend the material incorporated by reference to use language consistent with this administrative regulation; and (5) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 5:030. KCCRT member disciplinary actions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make technical corrections; (3) to amend Section 1 to clearly state the grounds for discipline of team members; (4) to amend Section 2 to clarify the disciplinary process, the right to appeal a disciplinary decision, and the factors that will be considered when deciding a disciplinary case; (5) to amend Section 3 to clearly list the possible sanctions; (6) to delete Section 4 in its entirety because it repeated statutory language; and (7) 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.

106 KAR 5:040. Initiation of a crisis or disaster response.

In response to a question by Co-Chair Roeding, Ms. Grubbs stated that the process to initiate a response described in this administrative regulation had been in use since the agency was created in 1997. She stated that the highest ranking official in an organization must contact the agency to request its services or, if the governor declared a state of emergency, the state deployed the agency.

In response to questions by Co-Chair Damron, Ms. Grubbs stated that the crash of flight 5191, the flood of 1997, the Heath High School shooting, and the Murray State University dorm fire were all examples of crises to which the agency responded. She stated that the agency could travel out of state in accordance with the emergency management compact.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete citations; (2) to amend Section 1 to clarify the methods to initiate crisis services; and (3) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Kentucky Board of Pharmacy: Pharmacy**

201 KAR 2:260. Automated Pharmacy System in Residential Hospice Facilities. Michael Burleson, executive director, represented the board.

In response to questions by Senator Tapp, Mr. Burleson stated that all types of medication were dispensed through the automated system but many were controlled substances. He stated the automated system was a better mechanism to timely provide medication to hospice patients and only nurses had access to the medications.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Sections 1 to 3 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (4) to amend Section 3 to insert two additional requirements established in statute. Without objection, and with agreement of the agency, the amendments were approved.

#### **Kentucky Board of Licensed Professional Counselors: Certification for Professional Counselors**

201 KAR 36:070. Education Requirements. Claude Wagner, director, Division of Occupations and Professions, and James Grawe, general counsel, represented the board.

**COMMERCE CABINET: Kentucky Department of Fish and**

**Wildlife Resources: Game**

301 KAR 2:122. Hunting seasons, methods, and limits for small game. Morgain Sprague, general counsel, and Don Walker, assistant director, represented the department.

301 KAR 2:185. Hunter Education.

In response to a question by Co-Chair Roeding, Ms. Sprague stated that the primary target of the education program was children ages nine through twelve. She stated that children are not eligible to attend state conservation camps until age nine and that younger children would be under the control of their parents.

A motion was made and seconded to approve the following amendments: to amend Sections 2 to 5 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division of Water: Water Quality**

401 KAR 5:201. Repeal of 401 KAR 5:200. Justin Dearing, regulations coordinator; Sandy Gruzesky, assistant director; and Donna Marlin, division branch manager, represented the department.

**Public Water Supply**

401 KAR 8:040. Laboratory certification.

In response to a question by Co-Chair Roeding, Ms. Gruzesky stated that the certification program had been in place for several years and would not create problems for smaller water districts.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 7 and 9 to 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 7 to clarify that laboratories shall make provisions to receive and test analytical samples twenty-four (24) hours a day during emergencies. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:070. Public notification.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 5 and 7 to 10 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 1 to clarify that public notice shall be given by a drinking water system in violation of 401 KAR Chapter 8 and that the violation number is printed on the Notice of Violation; and (5) to amend Section 3 to correct the title of a federal regulation. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:075. Consumer confidence reports.

In response to a question by Co-Chair Roeding, Ms. Gruzesky stated that the consumer confidence report is an annual report that a water system is required to provide to each of its customers. The report provides information about the water system's functioning in the past year and how well it protected public health.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY para-

graph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 1 to clarify that the Consumer Confidence Report shall be submitted to the drinking water system's customers and to the cabinet by the annual deadline. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:150. Disinfection, filtration, and recycling.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 4 and 6 to 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:160. Enhanced filtration and disinfection for large systems serving at least 10,000 people.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 7 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 3 to clarify that sigma is the correct symbol for use in calculating CT values. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:162. Enhanced filtration and disinfection for small systems serving less than 10,000 people.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 6 and 9 to 17 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:501. Repeal of 401 KAR 8:500.

401 KAR 8:510. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:550. Radionuclides.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Division of Waste Management: General Administrative Procedures**

401 KAR 30:005. Definitions related to 401 KAR Chapter 30. Michael Mullins, section supervisor; Tony Hatton, assistant director; and Mike Guffey, environmental scientist, represented the division.

Senator Tapp stated that it was impossible to read and understand the large number of administrative regulations filed by the division in the short period of time available to the subcommittee members. He stated he was concerned that some of the administrative regulations may have a negative impact but that there was insufficient time to review them all. He stated that cabinets should not bring such a large number of administrative regulations before the subcommittee at one time.

Mr. Hatton stated that it was a very large number of administrative regulations because it was a program with a broad reach. He stated that it was a mature regulatory program that had been in place since 1980, that very few comments were received, and that the administrative regulations did not contain new requirements. He stated that most of these administrative regulations were no less stringent than federal regulations and in the few areas in which they were more stringent than federal regulations, it was primarily due to statutory requirements.

Senator Pendleton stated that it was impossible to read such a large volume of material in the time available.

Representative Weston stated that he agreed that this was a large volume of material that was difficult to digest. He stated that there were situations in each state that sometimes warranted administrative regulations that were more stringent than the federal regulations.

Co-Chair Damron stated that he shared some of the members' concerns about the large number of administrative regulations from a single cabinet. He stated that these administrative regulations were filed several months ago, went through the publication process, and there was an opportunity to discuss any problems. He stated that the subcommittee had the authority to revisit any of these administrative regulations if necessary.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 30:020. General provisions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 30:035. Rulemaking petitions.

In response to a question by Co-Chair Roeding, Mr. Guffey stated that the fee was required by statute and had not been

changed. Additionally, Mr. Hatton stated that there were no fee changes in any of the administrative regulations in this package.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3, 10, and 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 30:040. Transfer of regulatory responsibility.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 30:071. Repeal of 401 KAR 30:010, and 30:070.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to show that 401 KAR 30:080 is also being repealed by this administrative regulation; and (2) to amend the RELATES TO paragraph to correct a statutory citation. Without objection, and with agreement of the agency, the amendments were approved.

**Identification and Listing of Hazardous Waste**

401 KAR 31:005. Definitions related to 401 KAR Chapter 31.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 31:010. General provisions for hazardous wastes.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 4, 6, 8, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 31:020. Criteria for identifying the characteristics of hazardous waste and criteria for listing.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 31:030. Characteristics of hazardous waste.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for

and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 31:040. Lists of hazardous wastes.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 31:050. General provisions for special wastes.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 31:070. Delisted hazardous waste streams.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 31:100. Representative sampling methods.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 31:110. Method 1311 toxicity characteristic leaching procedure.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 31:121. Repeal of 401 KAR 31:060, 31:120, and 31:190.**

**401 KAR 31:160. Appendix on basis for listing hazardous waste.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 31:170. Appendix on hazardous waste constituents.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

**Standards Applicable to Generators of Hazardous Waste**

**401 KAR 32:005. Definitions related to 401 KAR Chapter 32.**

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 32:010. General provisions for generators.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 32:020. Manifest system.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 32:030. Pretransport requirements.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 5 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 32:040. Recordkeeping and reporting.**

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**401 KAR 32:050. Special conditions.**

In response to a question by Co-Chair Roeding about this administrative regulation differing from the federal regulation, Mr. Guffey stated this administrative regulation required an annual report rather than a biennial report in order to be consistent with a state statute that required annual reporting of hazardous waste assessments.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 32:060. Farmers.

In response to a question by Senator Pendleton, Mr. Guffey stated this administrative regulation cited the federal regulation and did not make any substantive change.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 32:065. Transfrontier shipments of hazardous waste for recovery within the OECD.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) 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.

401 KAR 32:100. Appendix on hazardous waste manifest and instructions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Standards Applicable to Transporters of Hazardous Waste**

401 KAR 33:005. Definitions related to 401 KAR Chapter 33.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 33:010. General provisions for transporters.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 33:020. Compliance with the manifest system and recordkeeping.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 33:030. Hazardous waste discharges during transportation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities**

401 KAR 34:005. Definitions related to 401 KAR Chapter 34.

In response to a question by Co-Chair Roeding, subcommittee staff stated that terms used for federal officials, agencies, and publications had been replaced with the corresponding terms for Kentucky officials, agencies, and publications.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:010. General provisions for facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:020. General facility standards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:030. Preparedness and prevention.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:040. Contingency plan and emergency proce-



dures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:050. Manifest system, recordkeeping and reporting.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 6, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:060. Releases from solid waste management units.

In response to a question by Co-Chair Roeding, Mr. Hatton stated that the purpose of this administrative regulation was to make it clear that clean-up under the hazardous waste program should be conducted pursuant to a clear, transparent process, similar to other clean-up programs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3, 5, 8, 12, and 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:070. Closure and postclosure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3, 4, 5, 8, and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:180. Use and management of containers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:190. Tank systems.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section 12 to establish provisions governing effective dates that are different in federal regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:200. Surface impoundments.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:210. Waste piles.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:220. Land treatment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:230. Landfills.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:240. Incinerators.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:245. Containment buildings.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:250. Miscellaneous units.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with



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agreement of the agency, the amendments were approved.

401 KAR 34:275. Air emission standards for process vents.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:280. Air emission standards for equipment leaks.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 to 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:281. Air emission standards for tanks, surface impoundments, and containers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, and 4 to 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:285. Drip pads.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 3 and 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section 7 to establish provisions governing effective dates that are different in federal regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:287. Special provisions for cleanup.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:290. Recordkeeping instructions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:320. Cochran's approximation to the Behrens-Fisher Students' T-Test.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY

AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:330. Examples of potentially incompatible waste.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:360. List of hazardous constituents for groundwater monitoring.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 34:370. Hazardous waste munitions and explosives storage.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

401 KAR 35:005. Definitions related to 401 KAR Chapter 35.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:010. General provisions for facilities

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:020. General facilities standards (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the TITLE and Section 4 to comply with the drafting and

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format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:030. Preparedness and prevention (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:040. Contingency plan and emergency procedures (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:050. Manifest system, recordkeeping and reporting (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:060. Groundwater monitoring (Interim Status).

In response to a question by Co-Chair Roeding, Mr. Hatton stated that there were no federal forms on this topic and that the state forms were available on the division's Web site.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:070. Closure and postclosure (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2, 3, 4, 9, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:180. Use and management of containers (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:190. Tank systems (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:200. Surface impoundments (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:210. Waste piles (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:220. Land treatment (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:230. Landfill (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:240. Incinerators (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:245. Containment buildings (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:250. Thermal treatment (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:260. Chemical, physical, and biological treatment (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:270. Underground injection (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to comply with the drafting requirements of KRS Chapter 13A; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:275. Air emission standards for process vents (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:280. Air emission standards for equipment leaks (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 to 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2, 4, and 6 to 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section 12 to establish provisions governing effective dates that are different in federal regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:285. Drip pads (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY

AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section 7 to establish provisions governing effective dates that are different in federal regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:290. Appendix on recordkeeping instructions (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:310. Appendix on interim primary drinking water standards (Interim Status). A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:320. Appendix on tests for significance (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:330. Appendix on examples of potentially incompatible waste (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:340. Appendix on Compounds with Henry's Law Constant less than 0.1 Y/X (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 35:350. Hazardous waste munitions and explosives storage (Interim Status).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the TITLE and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with

agreement of the agency, the amendments were approved.

**Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities**

401 KAR 36:005. Definitions related to 401 KAR Chapter 36.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 36:020. Hazardous waste burned in boilers and industrial furnaces.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section 15 to establish provisions governing effective dates that are different in federal regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 36:025. Tables and procedures associated with the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 36:030. Recyclable materials used in a manner constitution disposal.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 36:060. Recyclable materials used for precious metal recovery.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 36:070. Spent lead-acid batteries being reclaimed.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY para-

graph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 36:080. Military munitions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2, 3, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 36:090. Conditional exemption for low-level mixed waste storage and disposal. A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to more accurately reflect the content of this administrative regulation; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 2 to correct statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

**Land Disposal Restrictions**

401 KAR 37:005. Definitions related to 401 KAR Chapter 37.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 37:010. General provisions for land disposal restrictions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 37:020. Schedule for land disposal prohibition and establishment of treatment standards.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to more accurately reflect the content of this administrative regulation; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 37:030. Prohibitions on land disposal.

In response to a question by Co-Chair Roeding, Mr. Hatton stated that this administrative regulation was stricter than the federal regulation governing metal emissions. He stated that there was only one facility in Kentucky that would be affected by this administrative regulation and that the facility staff indicated that there would be no problem with meeting the stricter standard. Mr.

Hatton stated that no fees would be raised.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section 12 to establish provisions governing effective dates that are different in federal regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 37:040. Treatment standards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 3, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 37:050. Prohibitions on storage.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 37:060. Appendix to 401 KAR Chapter 37.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the TITLE and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Hazardous Waste Permitting Process**

401 KAR 38:005. Definitions related to 401 KAR Chapter 38.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:010. General provisions for permitting.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:020. Interim status provisions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY

AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section 5 to establish provisions governing effective dates that are different in federal regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:025. Permit review and determination timetables.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to delete Section 5, to delete outdated provisions that applied only under a prior amendment to this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:030. Conditions applicable to all permits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 1 to establish requirements for immediate reporting. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:040. Changes to permits; expiration of permits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:050. Public information procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 12, 14, 14, and 16 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 10 to establish requirements for re-opening a public comment period. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:060. Special types of permits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:070. Application procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to

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amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 3, 6, 8, and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:080. Contents of Part A application.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:090. General contents of Part B application.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2 to 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section to specify that the subject matter "location information" shall be governed by 40 C.F.R. 270.14(b)(11). Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:101. Repeal of 401 KAR 38:100.

401 KAR 38:150. Specific Part B requirements for containers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:160. Specific Part B information requirements for tanks.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:170. Specific Part B requirements for surface impoundments.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) 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.

401 KAR 38:180. Specific Part B requirements for waste piles.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments

were approved.

401 KAR 38:190. Specific Part B requirements for incinerators.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:200. Specific Part B requirements for land treatment facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:210. Specific Part B requirements for landfills.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:230. Specific Part B requirements for miscellaneous units.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:240. Specific Part B requirements for process vents.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:250. Specific Part B requirements for equipment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:260. Specific Part B requirements for boilers and industrial furnaces burning hazardous waste.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments



were approved.

401 KAR 38:270. Specific Part B information requirements for drip pads.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:290. Specific Part B information requirements for air emission control for tanks, surface impoundments, and containers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the TITLE and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:300. Specific Part B information requirements for postclosure permits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:310. Permit denial.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:320. Remedial action plans.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:330. Integration with Maximum Achievable Control Technology (MACT) standards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 38:500. Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct

statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Standards for Special Collection System Wastes

401 KAR 43:005. Definitions related to 401 KAR Chapter 43.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 43:010. General standards for universal waste.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 to 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 43:020. Standards for small quantity handlers of universal waste.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2, 4, and 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 43:030. Standards for large quantity handlers of universal waste.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 5, and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 43:040. Standards for universal waste transporters.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 43:050. Standards for destination facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this

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administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### 401 KAR 43:060. Import requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

### 401 KAR 43:070. Petitions to include other wastes under 401 KAR Chapter 43.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### Waste Tires

#### 401 KAR 44:005. Definitions related to 401 KAR Chapter 44.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 2 to correct the tables showing the appropriate cross-references between the federal regulations and the state administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

#### 401 KAR 44:010. Applicability.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

#### 401 KAR 44:020. Standards for used oil generators.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 401 KAR 44:030. Standards for used oil collection centers and aggregation points.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to create a new Section 4 to incorporate by reference the required "Used Oil Collection Center Registration and Annual Reporting Form". Without objection, and with agreement of the agency, the amendments

were approved.

#### 401 KAR 44:040. Standards for used oil transporter and transfer facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 3, 5, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 401 KAR 44:050. Standards for used oil processors and refiners.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 5, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 401 KAR 44:060. Standards for used oil burners who burn off-specification used oil for energy recovery.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 401 KAR 44:070. Standards for used oil fuel marketers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### 401 KAR 44:080. Standards for use as a dust suppressant and disposal of used oil.

In response to a question by Co-Chair Roeding, Mr. Guffey stated that an existing statute prohibited the use of used oil as a dust suppressant.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

### Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:220. CAIR NOx Ozone Season Trading Program. John Lyons, director, and Lona Brewer, manager, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 to 3 to comply with the

drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **New Source Performance Standards**

401 KAR 60:020. Mercury Budget Trading Program.

In response to a question by Co-Chair Roeding, Mr. Lyons stated that mercury was a neurotoxin that was harmful to small children and women of child-bearing age. He stated that this administrative regulation was consistent with the federal rule except for the allotment of mercury credits to existing industry. Under the federal rule, 95 percent of the credits were for existing sources and 5 percent were for new sources. This administrative regulation allotted 98 percent for existing utilities and 2 percent for new sources.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add a statutory citation; and (2) to amend Section 3 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **TRANSPORTATION CABINET: Department of Highways: Right-of-way**

603 KAR 4:045. Cultural and recreational supplemental guide signs and boundary signs. Dana Fugazzi, attorney; Kathy Woods, executive advisor; and Tom Napier, division of maintenance, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **EDUCATION CABINET: Kentucky Board of Education: Office of Chief State School Officer**

701 KAR 5:110. Use of local monies to reduce unmet technology need. Kevin Brown, assistant general counsel, and David Couch, associate commissioner for technology, represented the board.

In response to questions by Co-Chair Roeding, Mr. Brown stated that a district's unmet need was funded by the department and any other sources the district has. He stated the district tracks the funding sources and reports its technology expenditures. Under this administrative regulation, a district's technology plan was incorporated into its education plan. Every year, each district provides the board with a report of unmet need and a technology survey.

#### **ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Board of Tax Appeals: Tax Appeals**

802 KAR 1:010. Hearing procedures. Jon Ackerson, attorney, and John Forgy, general counsel, represented the board.

In response to questions by Representative Ford, Mr. Ackerson stated that the board tried to be taxpayer-friendly and that the required forms were available to appellants. He stated that he did not have statistics available on the number of cases won by appellants, but that the board accepted appeals from anyone and provided a hearing. He stated that the Kentucky Supreme Court required a legal entity to be represented by an attorney although an individual could represent himself.

In response to a question by Co-Chair Roeding, Mr. Ackerson stated that subpoenas can be necessary to obtain the cooperation of witnesses.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the function of this administrative regulation; (2) to amend Section 2 to add a statutory citation and delete repetitive language; (3) to amend Section 3 to add a citation; and (4) to amend Sections 2, 4, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Office of Housing, Buildings and Construction: Elevator Safety**

815 KAR 4:010. Annual inspection of passenger elevators. Mike Bennett, staff attorney; Richard Peddicord, chief deputy state fire marshal; Shane Peck, chief inspector; and Tim House, division director, represented the office.

In response to questions by Senator Tapp, Mr. Bennett stated that all of these administrative regulations were reviewed by the appropriate advisory committee before they were brought before the subcommittee. He stated that there were no comments received on any of these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Sections 1 to 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Sections 1 and 3 to correct titles of manuals incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

#### **Building Code**

815 KAR 7:120. Kentucky Building Code.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 to 3 and 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 5 to delete a document incorporated by reference that should have been incorporated in 815 KAR 7:125. Without objection, and with agreement of the agency, the amendments were approved.

#### **Standards of Safety**

815 KAR 10:060. Kentucky standards of safety.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 3 to 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 9 to correct a publication number for a document incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

#### **Plumbing**

815 KAR 20:015. Fees and refunds.

In response to a question by Co-Chair Roeding, Mr. House stated that the plumbing regulations made two changes regarding fees. He stated that a standard refund form was incorporated by reference and that a \$35 fee was instituted for the return of a cold check.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 1 through 3 to make technical corrections and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:020. Parts and materials list.

815 KAR 20:110. Traps and clean-outs.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (2) to amend Sections 1, 6 through 11, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:120. Water supply and distribution.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (2) to amend Sections 2, 4 through 6, 9, 10, 15, and 18 to make technical cor-

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rections and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:130. House sewers and storm water piping; methods of installation.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 8, 9, 11, 12, 21, and 29 to make technical corrections and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:150. Inspection and tests.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, and 6 to make technical corrections and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Electrical Inspectors**

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant of KRS 227A.060.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add a statutory citation; (2) to amend Section 3 to clarify that a reinstatement fee for a lapsed license must be paid in addition to a renewal fee; (3) to amend Section 10 to correct the edition dates of the forms incorporated by reference; (4) to amend the Electrical Contractor's License Application incorporated by reference to delete language that was deleted from the administrative regulation; and (5) to amend Sections 2 through 4, and 8 through 10 to make technical corrections and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Long Term Care and Community Alternatives: Medicaid**

907 KAR 1:025 & E. Payment for services provided by an intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit. Glenn Jennings, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred to the next meeting of the subcommittee.**

### **GENERAL GOVERNMENT CABINET: Kentucky Board of Veterinary Examiners: Examiners**

201 KAR 16:010. Code of ethical conduct. Dr. Ed Hall, board member; Claude Wagner, director, Division of Occupations and Professions; and James Grawe, general counsel represented the board.

201 KAR 16:060. Complaint processing procedures.

In response to questions by Representative Lee about the requirement that complaints be written and notarized despite the societal trend toward paperless communication, Mr. Hall stated that a notarized complaint was required in an effort to ensure the credibility of the complaint. Representative Lee stated that a notary vouched that the named person signed the document, not that the document was accurate or truthful. Dr. Hall stated that the issue could be taken back to the board for reconsideration. A motion was made and seconded to defer consideration of this regulation and 201 KAR 16:010 to the subcommittee's June agenda. Without objection and with agreement of the agency, the administrative

regulations were deferred.

### **ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Natural Resources: Miner Training, Education and Certification**

805 KAR 7:010. Definitions for 805 KAR Chapter 7.

805 KAR 7:100. Requirements for belt examiner.

### **Drugs Workplace Certification**

805 KAR 11:001. Definitions for 805 KAR Chapter 11.

805 KAR 11:010. Requirements for application for certification of drug-free workplace.

805 KAR 11:020. Requirements for certification of drug-free workplace.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Diseases**

902 KAR 2:080. Sexually transmitted diseases.

### **Radiation Operators Certification**

902 KAR 105:040. General radiation operator requirements.

902 KAR 105:061. Repeal of 902 KAR 105:060.

902 KAR 105:070. Violations and endorsement.

**The subcommittee adjourned until June 7, 2007 at 10 a.m.**

# CUMULATIVE SUPPLEMENT

## Locator Index - Effective Dates

L - 2

The Locator Index lists all administrative regulations published in VOLUME 32 of the Administrative Register from July, 2005 through June, 2006. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 31 are those administrative regulations that were originally published in VOLUME 31 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2005 bound Volumes were published.

## KRS Index

L - 24

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 32 of the Administrative Register.

## Subject Index

L - 52

The Subject Index is a general index of administrative regulations published in VOLUME 32 of the Administrative Register, and is mainly broken down by agency.



LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	32 Ky.R. Page No.	Effective Date	Regulation Number	32 Ky.R. Page No.	Effective Date
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VOLUME 32

The administrative regulations listed under VOLUME 32 are those administrative regulations that were originally published in Volume 32 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2006 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:**

(Note: Emergency regulations filed on or after 6/20/05 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.)

31 KAR 4:150E	866	10-13-05	Expired		8-2-06
Expired		8-9-06	201 KAR 11:011E		
31 KAR 4:160E			Resubmitted	1576	2-6-06
Resubmitted	1975	4-14-06	201 KAR 11:121E		
Replaced		(See 33 Ky.R.)	Resubmitted	1577	2-6-06
31 KAR 4:170E	1977	4-14-06	201 KAR 41:060E	2225	5-15-06
Replaced	2200	726-06	Replaced		(See 33 Ky.R.)
31 KAR 5:030E	2224	5-2-06	502 KAR 32:010E	1579	1-23-06
Replaced	375	9-1-06	Replaced	2007	6-2-06
103 KAR 1:040E	1512	2-10-06	503 KAR 3:050E	1367	1-12-06
103 KAR 1:050E	1514	2-10-06	Replaced	2268	7-7-06
Replaced		(See 33 Ky.R.)	503 KAR 3:070E	1986	3-17-06
103 KAR 15:020E	1547	2-1-06	Replaced		(See 33 Ky.R.)
Expired		8-31-06	505 KAR 1:101E	1988	3-21-06
103 KAR 15:100E	1548	2-10-06	Withdrawn		7-21-06
Replaced		(See 33 Ky.R.)	810 KAR 1:070E	1370	12-29-05
103 KAR 15:140E	1549	2-1-06	Replaced	2269	7-7-06
Expired		7-31-06	815 KAR 6:010E	2226	5-9-06
103 KAR 16:020E	1551	2-10-06	Replaced		(See 33 Ky.R.)
Replaced		(See 33 Ky.R.)	815 KAR 6:040E	2229	5-9-06
103 KAR 16:060E	1552	2-1-06	Replaced		(See 33 Ky.R.)
Replaced		(See 33 Ky.R.)	900 KAR 5:020E		
103 KAR 16:090E	1555	2-10-06	Resubmitted	1582	1-31-06
Replaced		(See 33 Ky.R.)	Replaced	2295	7-24-06
103 KAR 16:150E	1978	4-6-06	900 KAR 6:020E	1583	1-31-06
Replaced		(See 33 Ky.R.)	Replaced	1786	6-2-06
103 KAR 16:200E	1556	2-3-06	900 KAR 6:050E	1584	1-31-06
Expired		8-2-06	Replaced		(See 33 Ky.R.)
103 KAR 16:210E	1559	2-10-06	902 KAR 4:030E		
Replaced		(See 33 Ky.R.)	Resubmitted	1376	12-20-05
103 KAR 16:220E	1560	2-10-06	Replaced	2274	6-21-06
Replaced		(See 33 Ky.R.)	902 KAR 20:074E	2231	5-12-06
103 KAR 16:230E	1561	2-10-06	Replaced		(See 33 Ky.R.)
Replaced		(See 33 Ky.R.)	907 KAR 1:019E	1869	2-28-06
103 KAR 16:240E	1563	2-1-06	907 KAR 1:145E	1989	4-4-06
Replaced		(See 33 Ky.R.)	Replaced		(See 33 Ky.R.)
103 KAR 16:250E	1566	2-10-06	907 KAR 1:155E	2002	4-4-06
Replaced		(See 33 Ky.R.)	907 KAR 1:715E	1598	1-20-06
103 KAR 16:270E	1568	2-10-06	Replaced	2277	7-7-06
Replaced		(See 33 Ky.R.)	907 KAR 3:170E	1874	2-28-06
103 KAR 16:290E	1570	2-10-06	Replaced	2279	7-7-06
Replaced		(See 33 Ky.R.)	907 KAR 3:180E	2237	5-4-06
103 KAR 16:300E	1571	2-10-06	Withdrawn		6-30-06
Replaced		(See 33 Ky.R.)	908 KAR 3:190E	1212	12-9-05
103 KAR 16:310E	1979	4-6-06	Replaced		(See 33 Ky.R.)
Replaced		(See 33 Ky.R.)	921 KAR 4:116E	1601	2-1-06
103 KAR 16:320E	1981	4-6-06	Replaced	2019	6-2-06
Replaced		(See 33 Ky.R.)			
103 KAR 16:330E	1982	4-6-06	<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>		
Replaced		(See 33 Ky.R.)	16 KAR 1:050		
103 KAR 16:340E	1982	4-6-06	Amended	2044	(See 33 Ky.R.)
Replaced		(See 33 Ky.R.)	16 KAR 2:060		
103 KAR 17:060E	1984	4-6-06	Amended	2045	(See 33 Ky.R.)
Replaced		(See 33 Ky.R.)	16 KAR 5:010		
103 KAR 17:100E	1985	4-6-06	Amended	2047	(See 33 Ky.R.)
Replaced		(See 33 Ky.R.)	16 KAR 6:030		
103 KAR 18:070E	1572	2-1-06	Amended	2055	(See 33 Ky.R.)
Expired		7-31-06	31 KAR 4:040		
103 KAR 18:160E	1574	2-3-06	Amended	2310	(See 33 Ky.R.)
			31 KAR 4:160		
			Amended	2056	(See 33 Ky.R.)
			31 KAR 4:170	2200	7-26-06
			31 KAR 5:030	2387	(See 33 Ky.R.)
			103 KAR 1:040	1810	(See 33 Ky.R.)



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Regulation Number	32 Ky.R. Page No.	Effective Date	Regulation Number	32 Ky.R. Page No.	Effective Date
103 KAR 1:050		(See 33 Ky.R.)	201 KAR 20:110		
Amended	1687	8-7-06	Amended	1918	6-21-06
103 KAR 15:020	1815		201 KAR 20:215		
Amended	2283	(See 33 Ky.R.)	Amended	2322	9-1-06
103 KAR 15:100	1816	(See 33 Ky.R.)	201 KAR 20:370		
103 KAR 15:140	1817	(See 33 Ky.R.)	Amended	2069	7-24-07
103 KAR 16:020	1819	(See 33 Ky.R.)	201 KAR 20:411		
103 KAR 16:060	1716		Amended	1921	
Amended	2284	(See 33 Ky.R.)	201 KAR 20:490		
103 KAR 16:090	1819		Amended	2324	(See 33 Ky.R.)
Amended	2287	(See 33 Ky.R.)	201 KAR 21:015		
103 KAR 16:150			Amended	1727	(See 33 Ky.R.)
Amended	2059	(See 33 Ky.R.)	201 KAR 21:025		
103 KAR 16:200	1720	(See 33 Ky.R.)	Amended	1728	(See 33 Ky.R.)
103 KAR 16:210	1821	(See 33 Ky.R.)	201 KAR 21:031		
103 KAR 16:220	1821		Amended	1730	
Amended	2288	(See 33 Ky.R.)	Withdrawn		7-19-06
103 KAR 16:230	1823	(See 33 Ky.R.)	201 KAR 21:041		
Amended	2289		Amended	1731	
103 KAR 16:240	1824	(See 33 Ky.R.)	Withdrawn		8-7-06
103 KAR 16:250	1827	(See 33 Ky.R.)	201 KAR 21:045		
103 KAR 16:270	1830		Amended	1732	
Amended	2290	(See 33 Ky.R.)	Withdrawn		8-7-06
103 KAR 16:290	1831	(See 33 Ky.R.)	201 KAR 21:051		
103 KAR 16:300	1832		Amended	1734	(See 33 Ky.R.)
Amended	2292	(See 33 Ky.R.)	201 KAR 21:055		
103 KAR 16:310	2201	(See 33 Ky.R.)	Amended	1736	(See 33 Ky.R.)
103 KAR 16:320	2202	(See 33 Ky.R.)	201 KAR 21:060		
103 KAR 16:330	2203	(See 33 Ky.R.)	Amended	1737	
103 KAR 16:340	2204	(See 33 Ky.R.)	Withdrawn		8-7-06
103 KAR 17:060			201 KAR 21:065		
Amended	2060	(See 33 Ky.R.)	Amended	1738	
103 KAR 17:100	2205	(See 33 Ky.R.)	Withdrawn		7-25-06
103 KAR 18:070	1723	(See 33 Ky.R.)	201 KAR 21:070		
103 KAR 18:160	1833	(See 33 Ky.R.)	Amended	1739	
200 KAR 15:010			Withdrawn		8-7-06
Amended	1460		201 KAR 21:075		
Amended	1904	6-2-06	Amended	1740	
200 KAR 17:050			Withdrawn		8-7-06
Amended	1319		201 KAR 21:080		
Amended	1906		Amended	1741	
As Amended	2239	7-7-06	Withdrawn		7-25-06
200 KAR 17:070			201 KAR 21:085		
Amended	1323		Amended	1743	(See 33 Ky.R.)
Amended	1910		201 KAR 21:095		
As Amended	2242	7-7-06	Amended	1744	
201 KAR 1:015			Withdrawn		8-7-06
Amended	2061	(See 33 Ky.R.)	201 KAR 21:100		
201 KAR 1:050			Amended	1745	(See 33 Ky.R.)
Amended	2062	(See 33 Ky.R.)	201 KAR 22:045		
201 KAR 1:190			Amended	2069	(See 33 Ky.R.)
Amended	2063	9-1-06	201 KAR 22:070		
201 KAR 11:011			Amended	2070	
Amended	1724	(See 33 Ky.R.)	Withdrawn		6-19-06
201 KAR 11:105			201 KAR 25:031		
Amended	2311		Amended	2072	(See 33 Ky.R.)
201 KAR 11:121			201 KAR 27:005		
Amended	1725		Amended	1746	
201 KAR 11:220			As Amended	2247	7-7-06
Amended	2312	(See 33 Ky.R.)	201 KAR 27:007		
201 KAR 11:250			Amended	1748	
Amended	2314	(See 33 Ky.R.)	As Amended	2248	7-7-06
201 KAR 11:350			201 KAR 27:008		
Amended	2315	(See 33 Ky.R.)	Amended	1749	
201 KAR 11:400			As Amended	2249	7-7-06
Amended	2318	(See 33 Ky.R.)	201 KAR 27:010		
201 KAR 11:430			Repealed	1847	7-7-06
Amended	2320	(See 33 Ky.R.)	201 KAR 27:011	1835	
201 KAR 12:020			As Amended	2249	7-7-06
Amended	2066	(See 33 Ky.R.)	201 KAR 27:012		
201 KAR 20:070			Amended	1750	
Amended	1917	6-21-06	As Amended	2254	7-7-06



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201 KAR 27:013			301 KAR 1:085		
Repealed	1847	7-7-06	Amended	2081	(See 33 Ky.R.)
201 KAR 27:014			301 KAR 1:110		
Repealed	1847	7-7-06	Amended	2083	(See 33 Ky.R.)
201 KAR 27:015			301 KAR 1:115		
Repealed	1847	7-7-06	Amended	2084	(See 33 Ky.R.)
201 KAR 27:016			301 KAR 1:122		
Amended	1840		Amended	2086	(See 33 Ky.R.)
As Amended	2023		301 KAR 1:150		
201 KAR 27:017			Amended	2087	(See 33 Ky.R.)
As Amended	1844		301 KAR 1:201		
201 KAR 27:020			Amended	2088	(See 33 Ky.R.)
Amended	1752		301 KAR 2:041		
As Amended	2261	7-7-06	Amended	1763	
201 KAR 27:030			As Amended	2005	6-2-06
Repealed	1847	7-7-06	301 KAR 2:050		
201 KAR 27:031(r)			Amended	2092	7-12-06
As Amended	1847	7-7-06	301 KAR 2:111		
201 KAR 27:035			Amended	2094	7-12-06
Amended	1754		301 KAR 2:132		
As Amended	2262	7-7-06	Amended	2095	(See 33 Ky.R.)
201 KAR 27:040			301 KAR 2:142		
Amended	1755		Amended	1923	7-7-06
As Amended	2262	7-7-06	301 KAR 2:174		
201 KAR 27:045			Amended	2099	7-12-06
Amended	1756		301 KAR 2:176		
As Amended	2263	7-7-06	Amended	2100	(See 33 Ky.R.)
201 KAR 27:050			301 KAR 2:178		
Amended	1757		Amended	2101	(See 33 Ky.R.)
As Amended	2264	7-7-06	301 KAR 2:179		
201 KAR 27:055			Amended	2106	7-12-06
Amended	1759		301 KAR 2:251		
As Amended	2264	7-7-06	Amended	1765	6-2-06
201 KAR 27:060			301 KAR 3:022		
Amended	1760		Amended	2108	
As Amended	2265	7-7-06	Withdrawn		6-12-06
201 KAR 27:065			301 KAR 4:050		
As Amended	1847		Amended	1924	7-7-06
201 KAR 27:070			304 KAR 1:040		
Amended	1762		Amended	1925	
As Amended	2266	7-7-06	As Amended	2267	7-7-06
201 KAR 27:090			401 KAR 42:005		
As Amended	1849		Amended	2109	(See 33 Ky.R.)
201 KAR 29:010			401 KAR 42:011		
Amended	2326	9-1-06	Amended	2113	(See 33 Ky.R.)
201 KAR 29:015			401 KAR 42:020		
Amended	2327	(See 33 Ky.R.)	Amended	2115	(See 33 Ky.R.)
201 KAR 29:050			401 KAR 42:030		
Amended	2328	9-1-06	Amended	2117	(See 33 Ky.R.)
201 KAR 30:040			401 KAR 42:040		
Amended	2330	9-1-06	Amended	2118	(See 33 Ky.R.)
201 KAR 36:030			401 KAR 42:050		
Amended	2074	(See 33 Ky.R.)	Amended	2120	(See 33 Ky.R.)
201 KAR 36:040			401 KAR 42:060		
Amended	2076	(See 33 Ky.R.)	Amended	2121	(See 33 Ky.R.)
201 KAR 36:070			401 KAR 42:070		
Amended	2078	(See 33 Ky.R.)	Amended	2123	(See 33 Ky.R.)
201 KAR 39:050			401 KAR 42:071		
Amended	2331	(See 33 Ky.R.)	Repealed	2206	9-13-06
201 KAR 39:070			401 KAR 42:072	2206	9-13-06
Amended	2333	(See 33 Ky.R.)	401 KAR 42:080		
201 KAR 39:090			Amended	2125	(See 33 Ky.R.)
Amended	2335	(See 33 Ky.R.)	401 KAR 42:090		
201 KAR 41:020			Amended	2127	(See 33 Ky.R.)
201 KAR 41:040			401 KAR 42:200		
Amended	2337		Amended	2128	(See 33 Ky.R.)
Withdrawn		8-7-06	401 KAR 42:250	2207	(See 33 Ky.R.)
201 KAR 41:060			401 KAR 42:260		
Amended	2389	(See 33 Ky.R.)	Repealed	2206	9-13-06
201 KAR 41:070			401 KAR 42:270		
Amended	2390	(See 33 Ky.R.)	Repealed	2206	9-13-06
201 KAR 41:080			401 KAR 42:280		
Amended	2393	(See 33 Ky.R.)			
201 KAR 41:090					
Amended	2394	(See 33 Ky.R.)			
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Amended	2079	(See 33 Ky.R.)			



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Repealed	2206	9-13-06	Amended	1769	6-2-06
401 KAR 42:290			702 KAR 7:125		
Amended	2130	(See 33 Ky.R.)	Amended	1771	
401 KAR 42:300			As Amended	2009	6-2-06
Amended	2134	(See 33 Ky.R.)	703 KAR 5:010		
401 KAR 42:310			Amended	2151	8-7-06
Repealed	2206	9-13-06	703 KAR 5:140		
401 KAR 42:314			Amended	1775	6-2-06
Amended	2136	(See 33 Ky.R.)	704 KAR 3:303		
401 KAR 42:316			Amended	2153	(See 33 Ky.R.)
Amended	2139	(See 33 Ky.R.)	704 KAR 3:305		
401 KAR 42:330			Amended	1779	
Amended	2141	(See 33 Ky.R.)	Amended	2028	(See 33 Ky.R.)
401 KAR 42:335			704 KAR 3:490		
Amended	2143	(See 33 Ky.R.)	Amended	2154	(See 33 Ky.R.)
401 KAR 42:340			704 KAR 3:530	2213	(See 33 Ky.R.)
Amended	2145		803 KAR 2:180		
415 KAR 1:051	2212	(See 33 Ky.R.)	Amended	1338	(See 33 Ky.R.)
501 KAR 6:020			803 KAR 25:010		
Amended	1767		Amended	2340	
As Amended	2006	6-2-06	Withdrawn		6-9-06
Withdrawn		10-17-06	803 KAR 25:021		
501 KAR 6:060			Amended	2349	(See 33 Ky.R.)
Amended	2338	(See 33 Ky.R.)	806 KAR 2:080		
501 KAR 6:190			Repealed	2397	9-1-06
Amended	2147	(See 33 Ky.R.)	806 KAR 2:081(r)	2397	9-1-06
501 KAR 12:001(r)	2396	9-1-06	806 KAR 3:100		
501 KAR 12:010			Repealed	2398	9-1-06
Repealed	2396	9-1-06	806 KAR 3:101(r)	2398	9-1-06
501 KAR 12:020			806 KAR 6:030		
Repealed	2396	9-1-06	Repealed	2398	9-1-06
501 KAR 12:030			806 KAR 6:040		
Repealed	2396	9-1-06	Repealed	2398	9-1-06
501 KAR 12:040			806 KAR 6:050		
Repealed	2396	9-1-06	Repealed	2398	9-1-06
501 KAR 12:050			806 KAR 6:031(r)	2398	9-1-06
Repealed	2396	9-1-06	806 KAR 7:050		
501 KAR 12:060			Repealed	2399	9-1-06
Repealed	2396	9-1-06	806 KAR 7:051(r)	2399	
501 KAR 12:070			806 KAR 7:060		
Repealed	2396	9-1-06	Repealed	2399	9-1-06
501 KAR 12:080			806 KAR 7:070		
Repealed	2396	9-1-06	Repealed	2399	9-1-06
501 KAR 12:090			806 KAR 7:080		
Repealed	2396	9-1-06	Repealed	2399	9-1-06
501 KAR 12:100			806 KAR 9:310		
Repealed	2396	9-1-06	Amended	323	
501 KAR 12:110			Amended	909	
Repealed	2396	9-1-06	As Amended	2013	6-2-06
501 KAR 12:120			806 KAR 17:160		
Repealed	2396	9-1-06	Amended	1781	6-2-06
501 KAR 12:130			806 KAR 17:330		
Repealed	2396	9-1-06	Amended	1782	
501 KAR 12:140			As Amended	2015	6-2-06
Repealed	2396	9-1-06	808 KAR 1:050		
501 KAR 12:150			Amended	2156	(See 33 Ky.R.)
Repealed	2396	9-1-06	808 KAR 10:010		
502 KAR 32:010	1851		Amended	1784	
As Amended	2007	6-2-06	As Amended	2015	6-2-06
503 KAR 3:050			808 KAR 10:200		
Amended	1476		Amended	1482	
As Amended	2268	7-7-06	As Amended	2017	6-2-06
503 KAR 3:070			810 KAR 1:070	1501	
Amended	2149	(See 33 Ky.R.)	Amended	2030	
505 KAR 1:100			As Amended	2269	7-7-06
Amended	1478		810 KAR 1:080	1854	
Amended	2027	7-7-06	Amended	2292	(See 33 Ky.R.)
505 KAR 1:130			815 KAR 6:010	2400	(See 33 Ky.R.)
Amended	1335		815 KAR 6:020	2402	(See 33 Ky.R.)
Amended	1915		815 KAR 6:030	2403	(See 33 Ky.R.)
As Amended	2009	6-2-06	815 KAR 6:040	2405	(See 33 Ky.R.)
702 KAR 7:065			815 KAR 10:060		



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Amended 815 KAR 20:020	2352	(See 33 Ky.R.)	Amended 922 KAR 2:160	1953	(See 33 Ky.R.)
Amended 815 KAR 20:030	2357	(See 33 Ky.R.)	Amended 922 KAR 2:180	2191	(See 33 Ky.R.)
Amended 815 KAR 20:050	2361	(See 33 Ky.R.)	Amended 922 KAR 2:240	2383	(See 33 Ky.R.)
Amended 815 KAR 20:055	2362	(See 33 Ky.R.)		1963	(See 33 Ky.R.)
Amended 815 KAR 20:070	2364	(See 33 Ky.R.)			
Amended 815 KAR 20:090	2365	(See 33 Ky.R.)			
Amended 815 KAR 20:120	2367	(See 33 Ky.R.)			
Amended 815 KAR 35:060	2371	(See 33 Ky.R.)			
Amended 900 KAR 5:020	2377	(See 33 Ky.R.)			
Amended 900 KAR 6:020	1785				
Amended 900 KAR 6:050	2295	7-24-06			
Amended 900 KAR 6:050	1786	6-2-06			
Amended 902 KAR 4:030	1788				
Amended 902 KAR 4:030	2296	(See 33 Ky.R.)			
Amended 902 KAR 4:030	2036				
Amended 902 KAR 4:030	1487				
As Amended 902 KAR 20:074	2274	6-21-06			
Amended 902 KAR 20:091	2407	(see 33 Ky.R.)			
Amended 902 KAR 55:110	2157	(See 33 Ky.R.)			
Amended 906 KAR 1:100	1927	(See 33 Ky.R.)			
Amended 906 KAR 1:110	2380	(See 33 Ky.R.)			
Amended 907 KAR 1:019	2161	(See 33 Ky.R.)			
Amended 907 KAR 1:022	1929	(See 33 Ky.R.)			
Amended 907 KAR 1:044	2164	8-7-06			
Amended 907 KAR 1:044	1801				
Amended 907 KAR 1:044	2039				
As Amended 907 KAR 1:145	2276	7-7-06			
Amended 907 KAR 1:155	2169	(See 33 Ky.R.)			
Amended 907 KAR 1:715	2181	(See 33 Ky.R.)			
Amended 907 KAR 3:170	1803				
Amended 907 KAR 3:170	2041				
As Amended 908 KAR 3:060	2277	7-7-06			
Amended 908 KAR 3:190	1934				
Amended 921 KAR 2:055	2279	7-7-06			
Amended 921 KAR 3:050	2184	(See 33 Ky.R.)			
Amended 921 KAR 3:060	1352				
Amended 921 KAR 3:070	1937	(See 33 Ky.R.)			
Amended 921 KAR 4:116	1943	(See 33 Ky.R.)			
Amended 922 KAR 1:350	2186	(See 33 Ky.R.)			
Amended 922 KAR 1:350	1948	(See 32 Ky.R.)			
As Amended 922 KAR 1:350	1806				
	2019	6-2-06			



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<b>VOLUME 33</b>					
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>					
(Note: Emergency regulations filed on or after 6/20/05 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.)					
16 KAR 7:010E	679	8-11-06	Expired		2-3-07
Replaced	1277	12-1-06	201 KAR 15:110E	277	7-12-06
20 KAR 1:080E	5	5-24-06	Replaced	1066	11-3-06
Replaced	718	10-6-06	201 KAR 20:070E	3586	5-11-07
31 KAR 4:140E	1231	10-13-06	201 KAR 22:070E	279	6-28-06
Replaced	1788	2-2-07	Withdrawn		10-3-06
31 KAR 4:160E		(See 32 Ky.R.)	201 KAR 41:060E		(See 32 Ky.R.)
Replaced	27	7-26-06	Replaced	727	10-6-06
31 KAR 5:010E	3325	4-2-07	301 KAR 2:221E	1493	11-1-06
101 KAR 2:209E	1781	11-17-06	301 KAR 2:222E	1494	11-1-06
Withdrawn		1-31-07	301 KAR 2:223E	1500	11-1-06
101 KAR 2:210E	2258	12-22-06	301 KAR 2:225E	1045	8-25-06
103 KAR 1:050E		(See 32 Ky.R.)	Replaced	1111	12-7-06
Replaced	29	8-7-06	301 KAR 2:226E	1048	8-25-06
103 KAR 1:051E	2871	2-1-07	Replaced	1114	12-7-06
103 KAR 3:010E	2872	2-1-07	302 KAR 29:050E	686	7-24-06
103 KAR 3:020E	2875	2-1-07	Replaced	1794	2-2-07
103 KAR 3:030E	2880	2-1-07	302 KAR 39:020E	2261	1-4-07
103 KAR 3:040E	2888	2-1-07	Replaced	3165	5-4-07
103 KAR 3:050E	2896	2-1-07	501 KAR 3:070E		(See 32 Ky.R.)
103 KAR 15:100E		(See 32 Ky.R.)	Replaced	102	8-7-06
Replaced	58	8-7-06	501 KAR 6:240E	690	7-28-06
103 KAR 16:020E		(See 32 Ky.R.)	Replaced	1306	12-1-06
Replaced	59	8-7-06	502 KAR 10:110E	6	6-15-06
103 KAR 16:060E		(See 32 Ky.R.)	Replaced	763	10-6-06
Replaced	59	8-7-06	502 KAR 32:010	3327	4-12-07
103 KAR 16:090E		(See 32 Ky.R.)	703 KAR 5:020E	691	8-2-06
Replaced	62	8-7-06	Replaced	898	12-1-06
103 KAR 16:150E		(See 32 Ky.R.)	803 KAR 2:308E	2905	2-15-07
Replaced	63	8-7-06	803 KAR 2:320E	2908	2-15-07
103 KAR 16:210E		(See 32 Ky.R.)	803 KAR 2:403E	1050	8-24-06
Replaced	66	8-7-06	Replaced	1529	1-5-07
103 KAR 16:220E		(See 32 Ky.R.)	Resubmitted	2915	2-15-07
Replaced	379	9-1-06	803 KAR 2:425E	1052	8-24-06
103 KAR 16:230E		(See 32 Ky.R.)	Replaced	1531	1-5-07
Replaced	66	8-7-06	Resubmitted	2918	2-15-07
103 KAR 16:240E		(See 32 Ky.R.)	803 KAR 2:500E	1054	8-24-06
Replaced	67	8-7-06	Replaced	1531	1-5-07
103 KAR 16:250E		(See 32 Ky.R.)	Resubmitted	2921	2-15-07
Replaced	70	8-7-06	805 KAR 8:060E	281	7-12-06
103 KAR 16:270E		(See 32 Ky.R.)	Replaced	1538	12-7-06
Replaced	71	8-7-06	806 KAR 17:180E	284	7-12-06
103 KAR 16:290E		(See 32 Ky.R.)	Replaced	1325	12-1-06
Replaced	72	8-7-06	806 KAR 17:520E	286	7-12-06
103 KAR 16:300E		(See 32 Ky.R.)	Withdrawn		10-12-06
Replaced	73	8-7-06	806 KAR 17:540E	1233	10-13-06
103 KAR 16:310E		(See 32 Ky.R.)	806 KAR 17:545E	1235	10-13-06
Replaced	74	8-7-06	806 KAR 17:555E	1238	10-13-06
103 KAR 16:320E		(See 32 Ky.R.)	811 KAR 2:120E	1782	12-15-06
Replaced	75	8-7-06	Replaced	3201	5-4-07
103 KAR 16:330E		(See 32 Ky.R.)	815 KAR 6:010E		(See 32 Ky.R.)
Replaced	75	8-7-06	Replaced	778	10-6-06
103 KAR 16:340E		(See 32 Ky.R.)	815 KAR 6:040E		(See 32 Ky.R.)
Replaced	76	8-7-06	Replaced	781	10-6-06
103 KAR 17:060E		(See 32 Ky.R.)	825 KAR 1:020E	288	7-12-06
Replaced	77	8-7-06	Replaced	1541	12-7-06
103 KAR 17:100E		(See 32 Ky.R.)	900 KAR 6:030E	1056	9-8-06
Replaced	77	8-7-06	Replaced	1543	12-11-06
103 KAR 28:150E	1044	8-30-06	900 KAR 6:050		(See 32 Ky.R.)
Replaced	1523	1-5-07	Replaced	103	7-24-06
103 KAR 44:100E	2259	12-21-06	902 KAR 20:074E		(See 32 Ky.R.)
Replaced	3162	5-4-07	Replaced	1083	10-13-06
200 KAR 6:046E (r)	685	8-7-06	902 KAR 45:150E	1502	11-14-06
			907 KAR 1:008E	292	6-30-06
			Withdrawn		10-12-06
			907 KAR 1:011E	293	6-30-06
			Replaced	1544	1-5-07
			907 KAR 1:012E	298	6-30-06



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907 KAR 1:014E	300	6-30-06	As Amended	2926	4-6-07
Replaced	1550	1-5-07	11 KAR 3:100		
907 KAR 1:016E	302	6-30-06	Amended	162	
Withdrawn		10-12-06	As Amended	698	10-6-06
907 KAR 1:019E	123	8-7-06	11 KAR 4:080	258	
907 KAR 1:025E	3143	3-1-07	As Amended	708	10-6-06
907 KAR 1:026E	304	6-30-06	Amended	3224	
Replaced	1552	1-5-07	As Amended	3589	
907 KAR 1:030E	309	6-30-06	11 KAR 5:033		
Withdrawn		10-12-06	Amended	3225	
907 KAR 1:031E	312	6-30-06	As Amended	3589	
Replaced	1556	1-5-07	11 KAR 5:034		
907 KAR 1:038E	316	6-30-06	Amended	3226	
Replaced	1560	1-5-07	As Amended	3590	
907 KAR 1:145E		(See 32 Ky.R.)	11 KAR 5:130		
Replaced	782	10-6-06	Amended	175	
907 KAR 1:155		(See 32 Ky.R.)	As Amended	709	10-6-06
Withdrawn		9-1-06	11 KAR 5:140		
Resubmitted	1058	9-1-06	Amended	176	
907 KAR 1:160	1241	10-3-06	As Amended	710	10-6-06
907 KAR 1:170E	319	6-30-06	Amended	3228	
Replaced	1326	12-1-06	11 KAR 5:145		
907 KAR 1:350E	322	6-30-06	Amended	178	
Replaced	1563	1-5-07	As Amended	710	10-6-06
907 KAR 1:479E	324	6-30-06	11 KAR 5:200	2226	
Replaced	1564	1-5-07	As Amended	2927	4-6-07
907 KAR 1:604E	329	6-30-06	11 KAR 6:010		
Replaced	1568	1-5-07	Amended	179	
907 KAR 1:626E	335	6-30-06	As Amended	711	10-6-06
Replaced	1575	1-5-07	Amended	3230	
907 KAR 1:900E	340	6-30-06	As Amended	3590	
Replaced	1578	1-5-07	11 KAR 8:030		
907 KAR 3:005E	347	6-30-06	Amended	182	
Replaced	1585	1-5-07	As Amended	713	10-6-06
907 KAR 3:010E	350	6-30-06	11 KAR 8:040		
Withdrawn		9-1-06	Amended	1871	
Resubmitted	1062	9-1-06	As Amended	2928	4-6-07
907 KAR 3:125E	354	6-30-06	11 KAR 14:080		
Replaced	1588	1-5-07	Amended	1873	
907 KAR 3:130E	356	6-30-06	As Amended	2929	4-6-07
Replaced	1590	1-5-07	11 KAR 16:010		
907 KAR 3:181E	357	6-30-06	Amended	185	
Withdrawn		10-31-06	As Amended	715	10-6-06
907 KAR 3:182E	1505	10-31-06	Amended	3232	
Withdrawn		1-3-07	As Amended	3592	
907 KAR 3:183E	2263	12-27-06	11 KAR 16:070	3304	
908 KAR 2:190E	1507	10-17-06	As Amended	3593	
908 KAR 3:050E	359	6-30-06	11 KAR 18:010		
Replaced	1090	10-18-06	Amended	187	
908 KAR 3:190E	10	6-6-06	As Amended	716	10-6-06
Replaced	796	9-20-06	12 KAR 1:114(r)	1187	12-7-06
921 KAR 2:006E	1248	9-29-06	12 KAR 1:115		
Replaced	1823	2-2-07	Repealed	1187	12-7-06
921 KAR 2:015E	2266	12-27-06	16 KAR 1:050		(See 32 Ky.R.)
Replaced	3203	5-4-07	As Amended	17	8-7-06
921 KAR 2:370E	1257	9-29-06	16 KAR 2:010		
Replaced	1831	2-2-07	Amended	823	
921 KAR 4:118E	360	6-30-06	As Amended	1266	12-1-06
Replaced	1098	10-11-06	16 KAR 2:020		
922 KAR 1:400E	1262	9-29-06	Amended	826	
922 KAR 2:170E	362	6-30-06	As Amended	1266	
Replaced	1835	12-11-06	16 KAR 2:060		12-1-06
922 KAR 2:210E	368	6-30-06	As Amended	18	(See 32 Ky.R.)
Replaced	1597	12-11-06	16 KAR 2:140		8-7-06
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9 KAR 1:040			Amended	828	
Amended	3031		As Amended	1269	12-1-06
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10 KAR 2:020			Amended	830	
			As Amended	1270	12-1-06
			16 KAR 2:160		
			Amended	832	



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16 KAR 2:170			101 KAR 2:066		
Amended	834		Amended	4199	
As Amended	1272	12-1-06	101 KAR 2:210	2800	
16 KAR 3:080			As Amended	3333	
Amended	836		102 KAR 1:030		
As Amended	1272	12-1-06	Amended	3427	
16 KAR 5:010		(See 32 Ky.R.)	102 KAR 1:036		
As Amended	19	8-7-06	Amended	3428	
16 KAR 5:040			102 KAR 1:038		
Amended	838		Amended	1427	
As Amended	1274	12-1-06	Withdrawn		12-6-06
16 KAR 6:010			Amended	3430	
Amended	3032		102 KAR 1:175		
As Amended	3330		Amended	3431	
16 KAR 6:020			103 KAR 1:040		(See 32 Ky.R.)
Amended	840		As Amended	376	9-1-06
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As Amended	26	8-7-06	102 KAR 1:070		
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16 KAR 7:010			103 KAR 1:090	1003	
Amended	843		Withdrawn		9-12-06
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Amended	1104		103 KAR 1:130	1190	
As Amended	1513	1-5-07	As Amended	1790	2-2-07
16 KAR 9:040			103 KAR 1:370		
Amended	849		Withdrawn	***	9-11-06
As Amended	1282	12-1-06	103 KAR 2:005		
16 KAR 9:080	3567		Recodified from 103 KAR 7:025		
17 KAR 1:020	3078		103 KAR 2:020	2801	
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17 KAR 3:020	1466		103 KAR 3:010	3080	
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17 KAR 4:010	1188		103 KAR 3:020	3084	
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31 KAR 3:010			As Amended	3346	
Amended	3235		103 KAR 3:050	3104	
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Amended	3237		Withdrawn		9-21-06
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31 KAR 4:140			As Amended	1283	12-1-06
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31 KAR 4:160		(See 32 Ky.R.)	103 KAR 15:100		(See 32 Ky.R.)
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31 KAR 5:010			103 KAR 15:140		(See 32 Ky.R.)
Amended	3425		As Amended	378	9-1-06
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Amended	1422	2-2-07	As Amended	59	8-7-06
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Amended	1423	2-2-07	As Amended	59	8-7-06
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Amended	1425		As Amended	62	8-7-06
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101 KAR 1:325			As Amended	63	8-7-06
Amended	1875		103 KAR 16:200		(See 32 Ky.R.)
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101 KAR 2:046			103 KAR 16:210		(See 32 Ky.R.)
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103 KAR 16:230		(See 32 Ky.R.)	103 KAR 20:500	1013	
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103 KAR 16:240		(See 32 Ky.R.)	Amended	2343	
As Amended	67	8-7-06	As Amended	3150	5-4-07
103 KAR 16:250		(See 32 Ky.R.)	103 KAR 27:150		
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103 KAR 16:270		(See 32 Ky.R.)	As Amended	3151	5-4-07
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103 KAR 16:290		(See 32 Ky.R.)	As Amended	3151	5-4-07
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401 KAR 38:200			As Amended	753	9-13-06
Amended	2715		401 KAR 42:316		(See 32 Ky.R.)
As Amended	4111		Amended	480	
401 KAR 38:210			As Amended	755	9-13-06
Amended	2717		401 KAR 42:330		(See 32 Ky.R.)
As Amended	4112		Amended	483	
401 KAR 38:230			As Amended		9-13-06
Amended	2719		401 KAR 42:335		(See 32 Ky.R.)
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Amended	2721		As Amended	759	9-13-06
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401 KAR 38:250			Amended	2730	
Amended	2722		As Amended	4119	
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As Amended	739	9-13-06	As Amended	4151	
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Amended	466		Amended	2781	
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Amended	1617	2-2-07	Amended	4247	
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Amended	209	11-8-06	Amended	227	
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401 KAR 58:025			As Amended	2942	4-6-07
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401 KAR 59:001			Amended	230	
Amended	213	11-8-06	As Amended	763	10-6-06
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Amended	4231		Amended	1694	
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Amended	217	11-15-06	Amended	1698	
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401 KAR 63:002			Amended	1700	
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401 KAR 65:001			Amended	4249	
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Amended	546		750 KAR 1:010		
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600 KAR 6:060			As Amended	768	10-6-06
Amended	548		760 KAR 1:070	1756	3-9-07
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600 KAR 6:065			Amended	2152	
Amended	551		As Amended	3166	5-4-07
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600 KAR 6:070			Amended	2155	
Amended	552		As Amended	3168	5-4-07
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600 KAR 6:080			Amended	2157	
Amended	557		As Amended	3169	5-4-07
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603 KAR 4:045			Amended	2163	
Amended	3042		As Amended	3173	5-4-07
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701 KAR 5:110			Amended	2165	
Amended	3045		As Amended	3174	5-4-07
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702 KAR 6:100			As Amended	3178	5-4-07
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As Amended	1321	12-1-06	Amended	2165	
702 KAR 7:065			As Amended	3178	5-4-07
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707 KAR 1:290			Amended	2179	
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707 KAR 1:320			Amended	2184	
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787 KAR 1:250			803 KAR 2:425		
Amended	2196		Amended	1139	
As Amended	3191	5-4-07	As Amended	1531	1-5-07
787 KAR 1:260			Amended	3069	
Amended	2197		803 KAR 2:500		
As Amended	3191	5-4-07	Amended	1141	
787 KAR 1:270			As Amended	1531	1-5-07
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787 KAR 1:300			Amended	1143	
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787 KAR 1:310			Amended	2205	
Amended	2201		As Amended	2950	
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802 KAR 1:010			Amended	236	
Amended	2202		As Amended	770	10-6-06
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803 KAR 2:180		(See 32 Ky.R.)	804 KAR 4:170		
As Amended	102	8-7-06	Withdrawn	***	8-23-06
803 KAR 2:300			Amended	1146	
Amendment	1712		As Amended	1532	1-5-07
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Amended	3499		Withdrawn	***	8-23-06
803 KAR 2:305			Amended	1147	
Amended	3501		As Amended	1532	1-5-07
803 KAR 2:306			804 KAR 4:240		
Amended	3047		Withdrawn	***	8-23-06
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803 KAR 2:307			As Amended	1533	1-5-07
Amendment	1714		804 KAR 4:250		
As Amended	2299	3-9-07	Withdrawn	***	8-23-06
803 KAR 2:308			Amended	1150	
Withdrawn	***	11-17-06	As Amended	1534	1-5-07
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803 KAR 2:309			Withdrawn	***	8-23-06
Amendment	1717		Amended	1152	1-5-07
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Amendment	1721		Withdrawn	***	8-23-06
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803 KAR 2:317			As Amended	1535	1-5-07
Amendment	1724		804 KAR 4:380		
As Amended	2302	3-9-07	Withdrawn	***	8-23-06
803 KAR 2:318			Amended	1156	
Amended	3503		As Amended	1535	1-5-07
803 KAR 2:319			804 KAR 4:385		
Amended	3053		Withdrawn	***	8-23-06
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803 KAR 2:320			As Amended	1536	1-5-07
Withdrawn	***	11-17-06	804 KAR 4:400		
Amended	3055		Withdrawn	***	8-23-06
803 KAR 2:403			Resubmitted	1218	
Amended	1132		As Amended	1537	1-5-07
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Amended	3062		Withdrawn	***	8-23-06
803 KAR 2:417			Resubmitted	1219	
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803 KAR 2:418			Withdrawn	***	8-23-06
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Amended	3414		Amended	922	
805 KAR 8:060			As Amended	2955	4-6-07
Amended	560		811 KAR 1:030		
Amended	1341	12-7-06	Amended	924	
805 KAR 11:001	3126		As Amended	2956	4-6-07
Amended	3416		811 KAR 1:035		
805 KAR 11:010	3128		Amended	927	
Amended	3417		As Amended	3381	
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Amended	3419		Amended	931	
806 KAR 6:120	4290		As Amended	2958	4-6-07
806 KAR 12:120	4292		811 KAR 1:045		
806 KAR 12:140	4294		Amended	933	
806 KAR 12:150	4299		As Amended	3194	5-4-07
806 KAR 12:160	4301		811 KAR 1:050		
806 KAR 12:170	4305		Amended	936	
806 KAR 14:005			As Amended	2960	4-6-07
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806 KAR 15:060	4307		Amended	938	
806 KAR 15:070	4311		Amended	1348	
806 KAR 17:021(r)	1023	12-1-06	As Amended	3195	5-4-07
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806 KAR 17:520	657		Amended	945	
Withdrawn		10-12-06	As Amended	3384	
806 KAR 17:530	659		811 KAR 1:080		
Withdrawn		10-12-06	Amended	949	
806 KAR 17:540	1471		As Amended	2963	4-6-07
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806 KAR 17:545	1473		Amended	950	
Amended	1843		As Amended	3387	
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806 KAR 17:555	1476		Amended	953	
Amended	1846		Amended	1351	
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808 KAR 1:150			811 KAR 1:105		
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As Amended	2953	4-6-07	As Amended	2964	4-6-07
808 KAR 10:170			811 KAR 1:110		
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Amended	810		As Amended	2966	4-6-07
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810 KAR 1:080		(See 32 Ky.R.)	Amended	975	
As Amended	3379		Withdrawn		2-9-07
811 KAR 1:005			811 KAR 1:140		
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Amended	1345		As Amended	2967	4-6-07
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811 KAR 1:175			As Amended	4184	
Amended	982		820 KAR 1:001		
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811 KAR 1:195			820 KAR 1:015		
Amended	983		Amended	3511	
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811 KAR 1:215			Amended	3512	
Amended	984		820 KAR 1:029		
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811 KAR 1:220			820 KAR 1:032		
Amended	988		Amended	3516	
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811 KAR 1:225			Amended	3518	
Amended	991		820 KAR 1:046		
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811 KAR 2:120	2242		820 KAR 1:050		
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815 KAR 6:010		(See 32 Ky.R.)	Amended	3528	
As Amended	778	10-6-06	820 KAR 1:057		
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As Amended	779	10-6-06	820 KAR 1:058		
815 KAR 6:030		(See 32 Ky.R.)	Amended	3531	
As Amended	780	10-6-06	820 KAR 1:120		
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\* Statement of Consideration not filed by deadline  
 \*\* Withdrawn, not in effect within 1 year of publication  
 \*\*\* Withdrawn before being printed in Register  
 (r) Repealer regulation: KRS 13A.310-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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138.185	103 KAR 41:140		103 KAR 28:010
138.195	103 KAR 3:050		103 KAR 28:150
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138.205	103 KAR 41:140	139.120	103 KAR 27:150
138.210	103 KAR 3:050		103 KAR 27:220
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138.220	103 KAR 43:330		103 KAR 28:010
138.240	103 KAR 3:050		103 KAR 28:030
138.250	103 KAR 3:050		103 KAR 28:150
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138.260	103 KAR 3:050		103 KAR 30:270
138.270	103 KAR 3:050	139.130	103 KAR 28:010
138.320			103 KAR 28:030
138.341	103 KAR 3:050	139.140	103 KAR 27:150
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138.358	103 KAR 3:050		103 KAR 27:240
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138.460	103 KAR 3:050	139.150	103 KAR 28:141
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138.464	103 KAR 3:050		103 KAR 27:220
138.4605	103 KAR 3:050		103 KAR 27:230
138.470	103 KAR 3:050		103 KAR 28:170
138.480	103 KAR 28:010		103 KAR 30:290
138.502	103 KAR 3:050	139.170	103 KAR 3:020
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138.530	103 KAR 3:050		103 KAR 30:270
138.870	103 KAR 3:050	139.185	103 KAR 3:020
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139.210	103 KAR 3:020		103 KAR 28:170
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139.220	103 KAR 27:230		103 KAR 30:260
139.230	103 KAR 3:020		103 KAR 30:270
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139.250	103 KAR 3:020	139.485	103 KAR 27:220
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139.260	103 KAR 3:020		103 KAR 28:010
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139.270	103 KAR 3:020	139.620	103 KAR 3:020
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141.120	103 KAR	3:040		103 KAR	3:030
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141.170	103 KAR	3:040		103 KAR	3:030
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141.180	103 KAR	3:040	143.990	103 KAR	3:010
141.200	103 KAR	3:040		103 KAR	3:030
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141.205	103 KAR	3:040		103 KAR	3:030
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141.210	103 KAR	16:352		103 KAR	3:050
141.300	103 KAR	3:040	143A.035	103 KAR	3:010
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141.305	103 KAR	17:120		103 KAR	3:050
141.310	103 KAR	3:040	143A.037	103 KAR	3:010
141.325	103 KAR	3:040		103 KAR	3:030
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146.990	401 KAR 100:010		301 KAR 3:100
148.029	301 KAR 2:177	150.180	301 KAR 2:081
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149.344	401 KAR 100:010		301 KAR 2:132
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	301 KAR 2:195		301 KAR 5:030
	301 KAR 2:221	150.225	301 KAR 5:050
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	301 KAR 2:223		301 KAR 2:223
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150.015	301 KAR 2:015		301 KAR 5:050
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150.025	301 KAR 1:031		301 KAR 2:082
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150.105	301 KAR 2:177		301 KAR 2:223
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150.370	301 KAR 1:031		301 KAR 2:226
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	301 KAR 2:122	151.110	401 KAR 4:060
	301 KAR 2:172	151.182	401 KAR 4:060
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	301 KAR 2:177	151.280	401 KAR 4:060
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150.395	301 KAR 2:132	151.310	401 KAR 4:060
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150.410	301 KAR 2:049		103 KAR 3:040
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150.440	301 KAR 1:410	154.22-050	103 KAR 3:050
150.445	301 KAR 1:410	154.22-060	103 KAR 3:010
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150.470	301 KAR 1:031	154.22-070	103 KAR 3:010
150.485	301 KAR 3:022		103 KAR 3:050
150.520	301 KAR 1:085	154.23-010	103 KAR 3:010
	301 KAR 3:022		103 KAR 3:050
150.525	301 KAR 1:085		103 KAR 18:220
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150.600	301 KAR 2:221	154.23-055	103 KAR 18:220
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150.603	301 KAR 2:223	154.24-130	103 KAR 18:210
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150.620	301 KAR 1:410	154.26-010	103 KAR 18:180
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150.630	301 KAR 2:223	154.28-010	103 KAR 18:200
150.640	301 KAR 2:177	154.28-090	103 KAR 3:010
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154.45-100	103 KAR	3:010		707 KAR	1:340
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154.45-110	103 KAR	3:010		707 KAR	1:360
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156.095	16 KAR	2:020		707 KAR	1:350
156.101	16 KAR	7:010		707 KAR	1:360
156.160	702 KAR	5:010		707 KAR	1:370
	702 KAR	6:100		707 KAR	1:380
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156.670	701 KAR	5:110		707 KAR	1:290
157.200	707 KAR	1:280		707 KAR	1:300
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	707 KAR	1:320		707 KAR	1:340
	707 KAR	1:331		707 KAR	1:350
	707 KAR	1:340		707 KAR	1:360
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	707 KAR	1:310		707 KAR	1:331
	707 KAR	1:320		707 KAR	1:340
	707 KAR	1:331		707 KAR	1:350
	707 KAR	1:340		707 KAR	1:360
	707 KAR	1:350		707 KAR	1:370
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	707 KAR	1:331		707 KAR	1:350
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	707 KAR	1:380		707 KAR	1:290
157.226	707 KAR	1:280		707 KAR	1:300
	707 KAR	1:290		707 KAR	1:310
	707 KAR	1:300		707 KAR	1:320
	707 KAR	1:310		707 KAR	1:331
	707 KAR	1:320		707 KAR	1:340
	707 KAR	1:331		707 KAR	1:350
	707 KAR	1:340		707 KAR	1:360
	707 KAR	1:350		707 KAR	1:370
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	503 KAR	4:040		103 KAR	3:050
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237.120	503 KAR	4:0404	243.884	103 KAR	3:010
237.122	503 KAR	4:040		103 KAR	3:050
237.124	503 KAR	4:040		804 KAR	4:380
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238.505	820 KAR	1:032	244.230	804 KAR	4:385
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238.515	820 KAR	1:015	244.440	804 KAR	4:240
	820 KAR	1:055	247.220	302 KAR	15:010
	820 KAR	1:056	247.232	302 KAR	16:010
238.525	820 KAR	1:015		302 KAR	16:020
238.535	820 KAR	1:015	247.234	302 KAR	16:010
	820 KAR	1:055		302 KAR	16:020
238.536	820 KAR	1:120	247.236	302 KAR	16:010
238.545	820 KAR	1:032	247.920	103 KAR	3:020
	820 KAR	1:036	247.990	302 KAR	16:010
	820 KAR	1:046		302 KAR	16:020
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	820 KAR	1:055	248.709	10 KAR	2:020
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238.547	820 KAR	1:055	248.713	10 KAR	2:020
	820 KAR	1:056	248.721	10 KAR	2:020
238.500-238.995	820 KAR	1:001	248.756	103 KAR	3:010
238.530	820 KAR	1:029		103 KAR	3:050
238.550	820 KAR	1:025	250.021 - 111	12 KAR	1:114
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	820 KAR	1:057	260.166	302 KAR	29:020
	820 KAR	1:058	260.167	302 KAR	29:020
238.555	820 KAR	1:120	260.168	302 KAR	29:020
238.560	820 KAR	1:029	260.175	302 KAR	29:020
238.570	820 KAR	1:057	271B.8	922 KAR	1:300
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241.060	804 KAR	4:410	281.880	500 KAR	14:010
241.065	804 KAR	9:040		500 KAR	14:020
241.075	804 KAR	9:040	281.883	500 KAR	14:010
243.030	804 KAR	9:040		500 KAR	14:020
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243.050	804 KAR	4:230	292.420	808 KAR	10:170
243.154	804 KAR	4:420	299.530	103 KAR	3:010
243.155	804 KAR	4:330		103 KAR	3:050
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309.355	201 KAR	42:110	314.085	201 KAR	20:163
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309.359	201 KAR	42:035	314.103	201 KAR	20:110
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309.361	201 KAR	42:040	314.137	201 KAR	20:470
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309.362	201 KAR	42:020		201 KAR	20:411
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311.673	201 KAR	9:450	314.142	201 KAR	20:411
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311.680	201 KAR	9:460	314.193	201 KAR	20:057
311.720	922 KAR	1:350	314.470	201 KAR	20:056
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315.091	201 KAR 2:206	324.010	201 KAR 11:220
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315.126	201 KAR 2:250	324.360	201 KAR 11:350
315.295	201 KAR 2:206	324.395	201 KAR 11:220
315.300	201 KAR 2:260	324A.035	201 KAR 30:180
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316.127	201 KAR 15:110	327.040	201 KAR 22:140
317.085	201 KAR 20:450	327.045	201 KAR 22:140
317.450	201 KAR 14:180	327.050	201 KAR 22:020
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318.010	815 KAR 20:020		201 KAR 22:070
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	815 KAR 20:120		201 KAR 22:070
	815 KAR 20:130	327.070	201 KAR 22:040
318.015	815 KAR 20:020		201 KAR 22:140
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318.140	815 KAR 20:150		803 KAR 2:417
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321.351	201 KAR 16:010	338.061	803 KAR 2:300
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321.360	201 KAR 16:020		803 KAR 2:306
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322.070	201 KAR 18:020		803 KAR 2:316
322.090	201 KAR 18:020		803 KAR 2:317
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322.100	201 KAR 18:040		803 KAR 2:320
322.110	201 KAR 18:040		803 KAR 2:403
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341.070	787 KAR 1:020	351.103	805 KAR 7:010
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	787 KAR 1:300	351.106	805 KAR 7:100
341.115	787 KAR 1:020	351.120	825 KAR 1:020
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341.262	787 KAR 1:220	352.010 - 352.550	805 KAR 8:060
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341.270	787 KAR 1:210	363.590	302 KAR 85:010
341.272	787 KAR 1:210	363.610	302 KAR 85:010
341.300	787 KAR 1:030	393.110	20 KAR 1:080
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341.350	787 KAR 1:090	395.470	103 KAR 3:010
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341.820	787 KAR 1:250	413.120	103 KAR 3:010
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342.265	803 KAR 25:010		501 KAR 6:030
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342.732	803 KAR 25:010	447.53	907 KAR 1:038
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