

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 34, NUMBER 1  
SUNDAY, JULY 1, 2007

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#### **MEETING NOTICE: ARRS**

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet July 9, 2007 at 10 a.m. in room 154 Capitol Annex. See tentative agenda on pages 1-3 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2007 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

**HOW TO CITE:** Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 34, Kentucky Register, page 318 (short form: 34 Ky R. 318).

**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**

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$96 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, July 9, 2007, at 10 a.m., Room 154 Capitol Annex**

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- 101 KAR 2:056. Registers.
- 101 KAR 2:066. Certification and selection of eligibles for appointment.

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- 102 KAR 1:036. Part-time service for university, college, and community college members. (Deferred from June)
- 102 KAR 1:038. Fractional service year for members initially employed on a full-time basis. (Deferred from June)

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**Real Estate Commission**

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

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- 201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapists or a physical therapist assistant. (Written Comments Received)

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- 202 KAR 6:030. Confidential and proprietary information.
- 202 KAR 6:060. PSAP pro rata fund disbursement.
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**Licensing**

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**Asbestos**

- 401 KAR 58:025. 40 C.F.R. Part 61 national emission standard for asbestos.

**New Source Performance Standards**

- 401 KAR 60 005. 40 C.F.R. Part 60 standards of performance for new stationary sources.
- 401 KAR 60:670. 40 C.F.R. Part 60 standards of performance for nonmetallic mineral processing plants.

**General Standards of Performance.**

- 401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.
- 401 KAR 63:023. Repeal of 401 KAR 63 020 and 63:021.

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- 401 KAR 64.001. Definitions for 401 KAR Chapter 64.
- 401 KAR 64.005. Toxic air pollutants, air toxics of concern, and levels-of-concern concentrations.
- 401 KAR 64.010. General Provisions for air toxics sources.
- 401 KAR 64.020. Risk assessment.
- 401 KAR 64.030. Air toxics safety net program.
- 401 KAR 64.050. Public review for sources not covered under 401 KAR 52:100.

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**Office of the Secretary**

- 501 KAR 6:020. Corrections policies and procedures.
- 501 KAR 6:030. Kentucky State Reformatory.
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- 702 KAR 7.065. Designation of agent to manage high school interscholastic athletics. (Hearing/Written Comments Received)

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- 707 KAR 1:280. Definitions. (Hearing/Written Comments Received)
- 707 KAR 1:290. Free appropriate public education. (Hearing/Written Comments Received)
- 707 KAR 1:300. Child find, evaluation, and reevaluation. (Deferred from June)
- 707 KAR 1:310. Determination of eligibility. (Hearing/Written Comments Received)
- 707 KAR 1:320. Individual education program. (Hearing/Written Comments Received)
- 707 KAR 1:331. Repeal of 707 KAR 1:330, Comprehensive system of personnel. (Deferred from June)
- 707 KAR 1:340. Procedural safeguards and state compliant procedures. (Hearing/Written Comments Received)
- 707 KAR 1:350. Placement decisions. (Hearing/Written Comments Received)
- 707 KAR 1:360. Confidentiality of information. (Deferred from June)
- 707 KAR 1:370. Children with disabilities enrolled in private schools. (Deferred from June)
- 707 KAR 1:380. Monitoring and recovery of funds. (Deferred from June)

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- 805 KAR 11:001. Definitions for 805 KAR Chapter 11. (Amended After Comments) (Deferred from May)
- 805 KAR 11:010. Requirements for application for certification of drug-free workplace. (Amended After Comments) (Deferred from May)
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**Office of Insurance**  
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**Assets And Liabilities**

- 806 KAR 6:120. Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities.

**Trade Practices and Frauds**

- 806 KAR 12:120. Suitability in Annuity Transactions.
- 806 KAR 12:140. Life Insurance Illustrations.
- 806 KAR 12:150. Annuity Disclosures.
- 806 KAR 12:160. Standards for Accelerated Death Benefits.
- 806 KAR 12:170. Life Insurance Disclosures.

**Insurance Contract**

- 806 KAR 14:005. Rate and Form Filing for Life Insurers.

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- 806 KAR 15:060. Universal Life Insurance.
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**Office of Charitable Gaming**

**Charitable Gaming**

- 820 KAR 1:001. Definitions for 820 KAR Chapter 1. (Deferred from June)
- 820 KAR 1:015. Issuance of annual license for a charitable organization. (Deferred from June)
- 820 KAR 1:025. Financial reports of a licensed charitable organization. (Written Comments Received)
- 820 KAR 1:029. Facility licensees. (Deferred from June)
- 820 KAR 1:032. Pulltab construction. (Written Comments Received)
- 820 KAR 1:036. Pulltab rules of play. (Written Comments Received)
- 820 KAR 1:046. Bingo rules of play. (Written Comments Received)
- 820 KAR 1:050. Raffle standards. (Written Comments Received)
- 820 KAR 1:055. Chanty fundraising event standards. (Deferred from June)



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820 KAR 1:056. Special limited charity fundraising event standards. (Deferred from June)  
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**Certificate of Need**

900 KAR 6.050. Certificate of need administrative regulation. (Hearing/Written Comments)

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902 KAR 105:061. Repeal of 902 KAR 105:060. (Deferred from January)  
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**Department for Medicaid Services**  
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**Division of Protection and Permanency**

**Child Welfare**

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922 KAR 1:310. Standards for child-placing agencies. (Written Comments Received)

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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

**Review Procedure**

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

## EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON JUNE 15, 2007

(NOTE: Emergency Administrative regulations expire 180 days from the date of filing, or upon replacement, repeal, or withdrawal)

**STATEMENT OF EMERGENCY**  
**920 KAR 2:040E**

The proposed emergency administrative regulation, 920 KAR 2:040E is necessary to modify the standards for designated regional children's advocacy centers and ensure services are provided to all children of the Commonwealth immediately. This administrative regulation change is needed to guarantee that services of regional centers are being provided to all counties within designated Area Development Districts and not just within the county in which the center is located. Failure to promulgate this regulation as an emergency jeopardizes the safety and health of child victims of sexual abuse by potentially exposing them to further acts of sexual abuse and is justified by language in KRS 131.190(1)(a)1 and 4. The filing of this administrative regulation as an emergency will ensure immediate delivery of services to one of our most vulnerable populations. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to provide immediate services to victimized children. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor  
 MARK D. BIRDWHISTLE, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Human Support Services**  
**Division of Child Abuse and Domestic Violence Services**  
**(Emergency Amendment)**

**920 KAR 2:040E. Standards for children's advocacy centers.**

RELATES TO: KRS Chapter 13B, 17.165, Chapter 45A, 314.011(14), 314.142, 431.600, 620.020, 620.045, 620.050  
 STATUTORY AUTHORITY: KRS 194A.050(1)

EFFECTIVE: June 4, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for [of] the Cabinet for Health and Family Services [cabinet] to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. To be eligible for grants from state government entities, KRS 620.045(2) requires children's advocacy centers to comply with the [their] statutory definition established in KRS 620.020(4) and administrative regulations promulgated by the cabinet. This administrative regulation establishes staff qualifications and program standards for children's advocacy centers.

Section 1. Definitions. (1) "Governing board" or "board" means the board of directors vested with the legal responsibility for management of the children's advocacy center.

(2) "Mental health discipline" means:

(a) Art therapy in accordance with KRS 309.130 to 309.1399;

(b) Marriage and family therapy in accordance with KRS 335.300 to 335.399;

(c) Professional counseling in accordance with KRS 335.500 to 335.599;

(d) Psychiatric nursing in accordance with KRS 202A.011(12)(d);

(e) Psychiatry in accordance with KRS 202A.011(12)(b);

(f) Psychology in accordance with KRS Chapter 319; and

(g) Social work in accordance with KRS 335.010 to 335.170.

(3) "Referral agreement" means a written protocol or process

between the children's advocacy center and the provider for services that the center does not have the capacity to provide to a child victim or nonoffending caretaker, and which is completed prior to the delivery of services and kept on file at the center.

(4) "Regional children's advocacy center" or "center" means an agency defined by KRS 620.020(4) and designated by the cabinet to serve as the regional children's advocacy center, in accordance with KRS 620.045(1).

Section 2. Governing Board of Directors. (1) A center shall be managed by a governing board in order to allow community involvement in the planning, development, and evaluation of services.

(2) A governing board shall adopt written bylaws. The bylaws shall include the:

(a) Purpose of the agency;

(b) Minimum and maximum number of board member positions;

(c) Qualifications for board members;

(d) Method of selecting board members;

(e) Terms of board members;

(f) Officers and duties;

(g) Method of election of officers and chairpersons;

(h) Quorum requirements for meetings of the board; and

(i) Method for removal of directors.

(3) The duties of the board shall be to:

(a) Schedule meetings of the board to be held at least six (6) times per state fiscal year;

(b) Maintain minutes of each meeting of the board containing:

1. The date and place of the meeting;

2. Names of board members present;

3. The subject matter discussed and actions taken; and

4. The name of the reporter;

(c) Establish standing committees of the board to include executive, nominating, finance, and personnel committees;

(d) Establish restrictions on reimbursement of board members including the prohibition against a member contracting with the board to perform personal or professional services; and

(e) Ensure that the facility housing the center is properly clean, maintained, private, and child-friendly.

(f) Recruit and maintain board members who represent the counties contained in the Area Development District where the center is located.

Section 3. Personnel Management. (1) A personnel file shall be maintained by the center for each employee.

(2) The minimum contents of the personnel file shall include:

(a) Current professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;

(b) Conditions or terms of employment that shall include a confidentiality statement signed by the employee;

(c) A personnel action document reflecting a change in status of an employee, such as salary change, promotion, resignation, or termination;

(d) A position description document including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position; and

(e) Results from a criminal records background check conducted in accordance with KRS 17.165 on the employee during the application process.

(3) Personnel policies shall be established by the center and shall include:

(a) Attendance and leave policies;

(b) Compensation plan;

(c) Hiring, disciplinary, and firing practices;

(d) Staff development and continuing education provisions;

(e) Employee grievance procedures;

- (f) Employee performance evaluations; and
- (g) Equal opportunity employment statements.
- (4) The governing board shall employ one (1) staff person as executive director of the children's advocacy center. The executive director shall.
  - (a) Be responsible for financial management of the center, including budgets and grant writing;
  - (b) Supervise the duties and activities of center staff and volunteers;
  - (c) Coordinate the design and delivery of services;
  - (d) Fulfill duties as required by the governing board;
  - (e) Report directly to the board on all center activities;
  - (f) 1. Have a master's degree from an accredited college or university and ~~two (2)~~ <sup>three (3)</sup> years of experience in a:
    - a. Human services;
    - b. Management; or
    - c. Criminal justice field; or
    - 2. Bachelor's degree from an accredited college or university and three (3) years of experience in a:
      - a. Human Services;
      - b. Management; or
      - c. Criminal justice field; and
  - (g) Affirm a commitment to the welfare and protection of children.
- (5) A governing board may establish the staff positions specified in this subsection.
  - (a) Child advocate. A child advocate shall have a bachelor degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.
  - (b) Therapist. A therapist shall.
    - 1. Have a doctorate or master's degree from an accredited college or university in a mental health discipline and two (2) years postdegree counseling or clinical experience; and
    - 2. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.
  - (c) Forensic interviewer. A forensic interviewer, if employed by the center, shall meet the qualifications of the therapist position specified in paragraph (b) of this subsection and shall have three (3) years of experience interviewing children.
  - (d) Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.
  - (e) Other staff necessary to support the administration or service delivery of the agency.
  - (f) The qualifications established in paragraphs (a) through (d) of this subsection shall not apply to center staff hired prior to the effective date of this administrative regulation.
  - (g) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.
  - (h) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (g) of this subsection before providing services to a child.
  - (i) A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications outlined in this section. An agreement for provision of service shall be on file at the center, and shall specify the qualifications of the staff.
  - (j) An employee of a children's advocacy center shall be at least eighteen (18) years of age.
  - (k) An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165.
  - (l) An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the employee is cleared of the charge.
  - (m) An employee or designated agent shall have immunity from civil liability and shall be provided a defense in civil actions pursuant to KRS 620.050(2).

Section 4. Services. (1) A center shall provide the services specified in subsections (2) through (5) of this section or develop a referral agreement [mechanism] to refer clients to a provider of

these services.

- (2) Advocacy services assist child victims and their nonoffending caregivers and may include:
  - (a) Accompaniment to court or court-related meetings;
  - (b) Case management services; and
  - (c) Information and referral services.
- (3) Counseling services may include:
  - (a) A crisis telephone line;
  - (b) Crisis counseling services; and
  - (c) Support group services.
- (4)(a) Clinical services may include:
  - 1. Mental health screening;
  - 2. Mental health evaluation;
  - 3. Individual therapy services for a child and nonoffending caretaker and family; and
  - 4. Group therapy services for a child and nonoffending caretaker;
- (b) Clinical services shall be provided by a professional who meets the requirements of Section 3(5)(b) of this administrative regulation.
- (5) Forensic interviewing includes structured interviews with a child for the purpose of facilitating a criminal investigation and may be provided on site at the center by:
  - (a) The center staff forensic interviewer in accordance with Section 3(5)(c) of this administrative regulation; or
  - (b) A law enforcement officer and a family service worker who is employed by the cabinet.
- (6) A child's recorded interview shall not be duplicated except in accordance with KRS 620.050(10).
- (7) Multidisciplinary team facilitation may include:
  - (a) Scheduling of meetings;
  - (b) Case tracking;
  - (c) Case review; and
  - (d) Data collection.
- (8) Except as provided by subsection (9) of this section, medical examination services shall be provided in accordance with 907 KAR 3.160 by a licensed physician with pediatric experience and expertise in the evaluation and treatment of child abuse.
- (9) Medical examination services may be provided by a sexual assault nurse examiner certified in accordance with KRS 314.011(14) and 314.142 if the child is fourteen (14) years of age or older.
- (10) Consultation and education services may include.
  - (a) School-based prevention programs;
  - (b) Community education programs;
  - (c) Media presentations;
  - (d) In-service training; and
  - (e) Case consultation services.
- (11) In addition to providing services to children in the county in which the center is located, regional center staff shall [may] serve:
  - (a) Children in other counties in the area development district, including those who need medical examinations or forensic interviewing services [as-available]; and
  - (b) As a technical assistant and consultation resource to criminal justice and human service professionals in the area development district in which the center is located.
- (12) Services provided by a center shall be coordinated with multidisciplinary teams as defined in KRS 431.600 and 620.020.

Section 5. Client Files. (1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.

(2) A client file shall include information sufficient to document the services provided by the agency.

(3) A center shall:

(a) Develop and maintain written confidentiality policies and procedures to ensure client privacy as provided in Kentucky Rules of Evidence 506 and 507; and

(b) Limit disclosure of confidential information pursuant to KRS 620.050(5) and (6).

Section 6. Funding. (1)(a) The cabinet shall designate one (1) regional children's advocacy center in each area development district.

(b) Any designation as a regional children's advocacy center shall terminate on June 30, 2007, and any subsequent designation shall terminate at the end of each state fiscal year. Any designation as a regional children's advocacy center may be renewed at the discretion of the cabinet.

(2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernment grants or fundraising to support efforts consistent with the mission of the center.

(3) In addition to the provisions of subsection 1(b) of this Section, the Commissioner of the Department for Human Support Services [The secretary of the cabinet] may rescind the designation of a center if a determination is made that the center failed to:

(a) Submit a budget and plan for services which shall substantiate [evidences] the capacity to provide services specified in KRS 620.020(4) and in accordance with this administrative regulation;

(b) Operate in accordance with a budget and plan for services approved by the cabinet; or

(c) Operate in accordance with the requirements established in a master agreement finalized between the children's advocacy center and the cabinet and of this administrative regulation.

(4) Cabinet funding for a center shall be contracted through the regional center.

(5) A center may contract or establish referral agreements with other agencies or professionals to provide services as defined within Section 4 of this administrative regulation.

(6) Except in cases where designation has terminated, as set forth in subsection 1(b) of this Section, a center that has received notice its designation has been rescinded may request an administrative hearing in accordance with KRS Chapter 13B. A written request for an administrative hearing shall be received by the Commissioner for Human Support Services within thirty (30) calendar days of the date of receipt of the department's notice that the designation has been rescinded. This request shall be sent to the Office of the Commissioner, Department for Human Support Services, Cabinet for Health and Family Services, 275 East Main Street, 3rd floor Frankfort Kentucky 40621 [A dispute shall be processed in accordance with KRS Chapter 45A].

Section 7. Audit and Monitoring. (1)(a) The cabinet or its agent shall randomly, or upon receipt of a complaint, audit, monitor, or conduct program reviews of a center.

(b) If the cabinet determines that an investigation would endanger a client or abuse victim, it shall identify an alternative method of review.

(2) A center shall allow the cabinet or its agent access to its property and records as required by subsection (1) of this section.

Section 8. Grievance and Appeals Process. (1) Client grievances. A center shall establish a written grievance procedure that shall:

(a) Be given to the parent or guardian of each child who comes to the center for services; and

(b) Contain a description of the services provided by the center and the procedure for filing a client grievance.

(2) A center shall inform the parent or guardian in writing of the child's appeal process described in 922 KAR 1:320.

MARLA J. MONTELL, Commissioner  
MICHAEL A. FIELDS, Undersecretary  
MARK BIRDWHISTELL, Secretary

APPROVED BY AGENCY: May 31, 2007

FILED WITH LRC: June 4, 2007 at 4 p.m.

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: Ann Gordon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for Children's Advocacy Centers which provide medical and counseling services to child victims of sexual abuse.

(b) The necessity of this administrative regulation: This administrative regulation is needed to allow the Cabinet for Health and Family Services to administer the state general fund contract for the centers and provide program oversight.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 620.045 which allows the Secretary of the Cabinet for Health and Family Services to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional children's advocacy centers. In order to be eligible for grants from any state government entity, a children's advocacy center shall meet the statutory definition of a children's advocacy center as provided by KRS 620.020 and shall operate consistent with administrative regulations promulgated by the Cabinet for Health and Family Services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards of care and operation for the 15 regional advocacy centers and will ensure the legislative intent that all children who are victims of sexual abuse will receive services.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amends the current standards of regional children's advocacy centers to require the center to serve the entire area development district in which it is designated, defines the term "referral agreement," adds the requirement that the Board of Directors represent the ADD where the center is located, amends the minimum requirements for the executive director, allows the Commissioner of the Department for Human Support Services to designate regional centers, permits a center that received notice it has lost its designation to request an administrative hearing in accordance with KRS Chapter 13B, adds additional justifications for removing a center's designation, and provides an exception to the requirement that the cabinet shall investigate all complaints.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment is necessary to ensure the delivery of service to all child victims of sexual abuse. Currently the regulation only requires services be provided to the 15 counties in which the centers are located.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 620.045 which allows the Secretary of the Cabinet for Health and Family Services to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional children's advocacy centers. In order to be eligible for grants from any state government entity, a children's advocacy center shall meet the statutory definition of a children's advocacy center as provided by KRS 620.020 and shall operate consistent with administrative regulations promulgated by the Cabinet for Health and Family Services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that the legislative intent of the statute, to provide services for all children in the Commonwealth, is satisfied.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation provides for 15 regional centers that provide a deliver service and are the only child advocacy centers in the commonwealth. This regulation will affect those 15 centers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not affect the majority of the centers as they currently are providing region wide services. The centers that do not serve the entire region will have to develop a system for ensuring all children in their region have access to the center and its services. The General Assembly provided expansion money in the 2006 budget for the centers to pro-

vide region wide coverage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The 15 Centers are funded in the amount of \$142,000 per year through general fund dollars. The entire network was provided one million in expansion money in 2006 to be divided equally between the centers. This funding should provide each center with the ability to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the regulation and amendment the centers will provide more and comprehensive services throughout the area development district.

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

(a) Initially: No additional expense.

(b) On a continuing basis: No additional expense

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to support the children's advocacy centers program.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the application of policy is applied equally to all children's advocacy centers.

#### 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 Department for Human Support Services 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 620.045, KRS 620.020, KRS 620.050

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.

(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 will not generate any additional revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? This program has been operated since 1999. This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This program has been operational since 1999. This amendment will not require any additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Expenditures

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC - Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD  
(As Amended at ARRS, June 7, 2007)

16 KAR 1:030. Procedures for certificate revocation, suspension, [voluntary surrender,] reinstatement and reissuance, and application denial.

RELATES TO: KRS 161.028(1), [161.140,] 161.120, 218A.010(5)

STATUTORY AUTHORITY: KRS 161.028(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 161.040 provides that a person shall not receive or hold a teaching certificate if the person is not of good moral character.] KRS 161.028(1) [establishes the Education Professional Standards Board and] authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring a teacher whose certificate has been suspended or revoked by the Education Professional Standards Board because the teacher engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. [and 161.120 provide that the Education Professional Standards Board may suspend or revoke teaching certificates.] This administrative regulation identifies the conditions for initiating a disciplinary [an] action against [to revoke or suspend] a teaching or administrative certificate and establishes procedures for certificate [revocation, suspension, voluntary surrender,] reinstatement, [and] reissuance, and application denial.

Section 1. Initiating Disciplinary Action Against [to Revoke or Suspend] a Certificate. [(1)] The [An action to revoke or suspend a Kentucky certificate may be initiated by the] Education Professional Standards Board may initiate disciplinary action against a Kentucky teaching or administrative certificate [(“the board”)] upon receipt from any source of a report or complaint which contains allegations that an individual who holds a Kentucky teaching or administrative certificate has engaged in conduct listed in KRS 161.120(1) [to warrant consideration for action against the certificate pursuant to KRS 161.120(1)], [of one (1) or more of the following:

- (a) Report of criminal prosecution for a person who is not employed in a public or private school position but who holds a Kentucky teaching certificate;
  - (b) Report of certificate revocation or suspension from another state;
  - (c) Report from a local district superintendent resulting from an unsatisfactory criminal records check as required by KRS 160.380;
  - (d) Report from the chief state school officer or a local board of education of the conduct of the superintendent which might reasonably be construed as grounds for revocation as set forth in KRS 161.120(1); or
  - (e) Report or information from other sources which might reasonably be construed as grounds for revocation as set forth in KRS 161.120(1).
- (2) Failure to report by the district superintendent as required by KRS 161.120(2)(b) may constitute grounds for revocation of the superintendent's certificate.

Section 2. Investigation. (1) Upon receiving a report as identified in Section 1 of this administrative regulation or KRS 161.120(2)(b), the board shall review a summary of the report prepared by the office of its executive secretary.

- (2) The board may cause an investigation relating to the cause for certificate revocation to be conducted.
- (3) The board may make the determination that the report does not warrant a hearing for certificate revocation.
- (4) If the board determines that a hearing is not warranted,

written notice of the decision shall be forwarded to the certificate holder. A copy of the notice shall be forwarded to the party initiating the complaint.

Section 3. Revocation or Suspension Upon Voluntary Surrender. (1) The board may revoke or suspend a teaching certificate upon a voluntary surrender of the certificate.

(2) The revocation or suspension of the teaching certificate shall be for a defined period of time or for an indefinite period, and shall be according to specified terms and conditions best adapted to protect the health, welfare and safety of school children and to rehabilitate or educate the certificate holder.

(3) The executive secretary to the board, or designee, may negotiate the terms and conditions of the revocation or suspension upon voluntary surrender.

(4) A revocation or suspension upon voluntary surrender shall not be final until approved by the board.

(5) The revocation or suspension shall

(a) Set forth findings of fact and the terms and conditions of the revocation or suspension upon voluntary surrender; and

(b) Provide that the certificate holder agrees that:

- 1. He is ineligible to hold a teaching certificate;
- 2. The surrender of the certificate is for cause; and
- 3. He has surrendered the certificate voluntarily, knowingly, and intelligently.

(6) The revocation or suspension shall be signed by the certificate holder, his attorney, if any, the chairman of the board, and the board's prosecutor.]

Section 2. [4.] Reinstatement and Reissuance of Certificate. (1)(a) A [An individual whose] certificate that has been suspended by the Education Professional Standards Board shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the Education Professional Standards Board [revoked may file a written petition seeking reissuance of the teaching certificate which shall state the reasons the applicant believes himself to be suitable for reissuance].

(b) If a certificate lapses during a period of suspension, at the end of the suspension period and upon completion of all conditions and requirements ordered by the Education Professional Standards Board, the certificate holder shall apply for renewal of the certificate and shall meet all educational requirements for renewal of the certificate.

(2) An individual whose certificate has been revoked [suspended] shall complete the "Application for Kentucky Certification or Change In Salary Rank", Form TC-1, Incorporated by reference in 16 KAR 2:010, [a written application for certification] prior to the reissuance [date] of the certificate.

(3) The burden of proving suitability for reissuance of a revoked certificate shall rest on the applicant seeking reinstatement.

(4) If reissuing a certificate, the Education Professional Standards Board may include terms and conditions that the board reasonably deems appropriate [to impose] as a condition of reissuance in accordance with KRS 161.120(11)(b).

(5) An applicant for reissuance of a revoked [or suspended] certificate shall satisfy all current educational requirements for the certificate.

(6)(a) If a certificate is suspended or revoked because the certificate holder engaged in misconduct involving the illegal use of a controlled substance [controlled substances] as defined in KRS 218A.010(5), in addition to [any] conditions for reinstatement or reissuance [ordered by the Education Professional Standards Board], the certificate holder shall at the certificate holder's [his or her] own expense provide written evidence that the certificate holder [he or she] has submitted to a drug test administered by a drug testing facility approved by the Education Professional Standards Board within thirty (30) days of reinstatement or submission

of an application for reissuance of the certificate.

(b) If the results of the drug test indicate drug use by the certificate holder, the certificate shall not be reinstated or reissued.

(c)(a) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the Education Professional Standards Board.

(d)(b) A drug test conducted under this subsection shall at a minimum test for the following controlled substances:

1. Marijuana;
2. Cocaine;
3. Opiates;
4. Amphetamines;
5. Phencyclidine;
6. Morphine;
7. MDMA (Ecstasy);
8. Methadone;
9. Benzodiazepines;
10. Barbiturates; and
11. Oxycodone.

(e)(1)(e) A certificate holder subject to the terms of this subsection may petition the Education Professional Standards Board to approve a drug testing facility of the certificate holder's choice.

2. The petition shall [his or her choice. The petition must] contain the following information:

- a.[1-1] The drug testing facility's name and location;
- b. The[2-1] name and telephone number for the director of the facility;
- c. The[3-1] method of test specimen collection;
- d.[4-1] The drug testing facility's method of assuring identity of the test subject;
- e.[5-1] Procedures for testing specimens, including forensic testing methods; and
- f.[6-1] Chain of custody protocols[and
- 7- Reason certificate holder wishes to use the facility]

Section 3.[6-1] Denial of Application for a Certificate. If the Education Professional Standards Board denies [After denying] an individual's application for a Kentucky teaching or administrative certificate pursuant to this administrative regulation, the individual may file an appeal in accordance with KRS 161.120(5)(a)2, [KRS 161-120(1) or this administrative regulation, the individual may file a written request for a hearing. The individual shall file the written request for a hearing within thirty (30) days of receipt of the letter notifying the individual of the denial. The Education Professional Standards Board shall] [KRS 161.040, the board shall schedule and] [conduct a hearing in accordance with KRS Chapter 13B] [upon written request filed by the applicant within thirty (30) days of the date of the letter advising of the denial].

TOM STULL, Chairperson

APPROVED BY AGENCY: March 28, 2007

FILED WITH LRC: April 2, 2007 at 2 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

#### EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, June 7, 2007)

16 KAR 9:080. University-based alternative certification program.

RELATES TO: KRS 161.027, 161.028(1)(k), (s), (t), 161.030(10), 161.048

STATUTORY AUTHORITY: KRS 161.027(1), 161.028, 161.030, 161.048(1)(d), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(d) and (7) requires the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for a university alternative certifica-

tion option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

Section 1. Definitions. (1) "Alternative administrator program" means a college or university post baccalaureate administrator preparation program for an individual [who is] enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, guidance counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent. [The employment position shall be consistent with the area of certification being sought through the preparation program.]

(2) "Alternative teacher program" means a college or university post baccalaureate teacher preparation program for an individual [who is] enrolled concurrently with employment as a teacher [in a local school district or Kentucky private school. The individual enrolled may be seeking initial teacher certification or if the individual is a professionally certified educator, an additional area or areas of teacher certification. The employment position shall be consistent with the area of certification being sought].

[(3) "Private school" means a regionally or nationally accredited nonpublic school, or a nonpublic school meeting the state performance standards as established in KRS 166.160.]

Section 2. University Requirements. (1) An accredited college or university seeking to offer a post baccalaureate alternative teacher or administrator program shall apply to the Education Professional Standards Board for program approval in accordance with 16 KAR 5:010.

(2)(a) In addition to the standards for program approval established [set forth] in 16 KAR 5:010, the educator preparation institution seeking alternative teacher or alternative administrator program approval shall develop and publish a plan of selection and admission of candidates to the alternative program.

(b) The plan shall be filed with the Education Professional Standards Board and shall include:

1. [describe:
  - (a) A method to verify that an applicant has a minimum of a bachelor's degree from an accredited college or university and the minimum grade point average required for admission to the program;
  2. [(b)] One (1) or more assessments to measure academic proficiency for program admission;
  3. [(c)] An evaluation of a candidate's disposition for the education profession;
  4. [(d)] A procedure to ensure that a candidate reviews the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and
  5. [(e)] A copy of the declaration signed by a candidate affirming a commitment to upholding the Code of Ethics and acknowledging awareness of information required for state certification.

(3) The alternative program shall be designed to [in a manner that will] provide a candidate with the [adequate] coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including internship programs, within a period of:

- (a) Three (3) years for those enrolled in an alternative teacher program; or
  - (b) Two (2) years for those enrolled in an alternative administrator program.
- (4) Upon approval, the alternative teacher or administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification program so that the candidate may be considered for employment pursuant to KRS



160.345(2)(h);

(c) Ensure that a candidate begins course work no later than ninety (90) days from the date the eligibility notice is issued;

(d) Establish, in consultation with the administration of a candidate's employing school, a written plan for mentoring the candidate in the employment setting.

(e) Provide, prior to a candidate's participation in the Kentucky Teacher or Principal Internship Program, a minimum of fifteen (15) hours of observation of a candidate in practice in the employment setting utilizing university faculty and a district-based mentor teacher;

(f) Provide effective candidate mentoring by maintaining an adequate number of personnel and sufficient resources to ensure that candidates meet professional, state, and institutional standards, including successful transition to the professional certificate;

(g) Maintain regular communications with the employing school so that the institution and employing school may [ear] assist the candidate as needed and address identified areas of improvement, and

(h) Notify the Education Professional Standards Board in writing if a candidate's employment in a covered position or enrollment in the alternative certification program permanently ceases.

**Section 3. Participation in the Alternative Teacher Program.** (1) Participation in the institution's alternative teacher program shall be available only to individuals who meet the institution's alternative program admission requirements.

(2) A candidate's employment position shall be consistent with the area of certification being sought through the preparation program.

(3) After notice of acceptance into the alternative teacher program and subsequent notification of selection for an eligible position, a candidate shall apply for a Temporary Provisional Certificate by submitting a completed TC-TP Application for Temporary Provisional Certificate to the Education Professional Standards Board.

(4)(a) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a temporary provisional certificate.

(b) The temporary provisional certificate shall be:

1. Issued for a period of one (1) year;

2. [;] Limited to the employing school district; and

3. [;] Contingent upon the [a] candidate's continued enrollment in the alternative preparation program and continued employment in an eligible position that corresponds to a candidate's certification program.

(5)(a) A candidate shall be eligible for no more than two (2) renewals of the temporary provisional certificate.

(b) Application for renewal shall be made by submitting a completed TC-TP form.

(c) The Education Professional Standards Board shall renew the temporary provisional certificate[;] upon verification of compliance with all eligibility requirements, including continued enrollment in the alternative preparation program and employment in an eligible position.

(6) If the [When the institution determines that a] candidate has successfully passed the required assessments as outlined in 16 KAR 6.010, and completed the required [sufficient] course work, the institution shall provide written notice to the employing school district that a candidate is eligible to participate in the Kentucky Teacher Internship Program in each subject area [the subject-area(s)] covered by the temporary provisional certificate and in accordance with 16 KAR 7.010.

(7) Upon receipt of the written notification regarding readiness for internship, the employing school district shall submit to the Education Professional Standards Board, a Confirmation of Employment in electronic form, or hard copy if the electronic system is unavailable.

(8) A candidate who failed to successfully complete the assessments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary certificate and who has been transitioned into an institution's traditional educator preparation program, shall be eligible for a Statement of Eligibility upon recommendation of the institution after [if a candidate fails to successfully complete the as-

essments, the internship, or the required coursework during the initial issuance and two (2) renewals of the temporary provisional certificate, the institution may transition a candidate into the institution's traditional preparation program and recommend the candidate for the Statement of Eligibility upon] the candidate's completion of the preparation program and the required assessments.

(9) If a candidate fails to complete all alternative program requirements during the initial issuance and two (2) renewals of the temporary provisional certificate, the employing school district may, pursuant to 16 KAR 2:010, 2:120, and 2:180, submit an application for emergency or conditional certification on behalf of the former employee to allow the individual to continue employment[; subject to the provisions of 16 KAR 2:010, 2:120, and 2:180].

**Section 4. Participation in the Alternative Administrator Program.** (1) Participation in the university alternative administrator program shall be available only to individuals who meet the institution's alternative program admission requirements.

(2) The employment position shall be consistent with the area of certification being sought through the preparation program.

(3) After notice of acceptance into the alternative administrator program[;] and subsequent notification of selection for an eligible position, a candidate shall apply for a temporary provisional certificate by submitting a completed TC-TP Application for Temporary Provisional Certificate to the Education Professional Standards Board.

(4)(a) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a temporary provisional certificate.

(b) The temporary provisional certificate shall be:

1. Issued for a period of one (1) year;

2. [year;] Limited to the employing school district; and

3. [;] Contingent upon the [a] candidate's continued enrollment in the alternative preparation program and continued employment in an eligible position that corresponds to a candidate's certification program.

(5)(a) A candidate shall be eligible for no more than one (1) renewal of the temporary provisional certificate.

(b) Application for renewal shall be made by submitting a completed TC-TP form.

(c) The Education Professional Standards Board shall renew the temporary provisional certificate[;] upon verification of compliance with all eligibility requirements, including continued enrollment in the alternative preparation program and employment in an eligible position.

(6)(a) If the [When an institution determines that an] alternative administrator candidate for principal certification has successfully passed the required assessments, as outlined in 16 KAR 6.030, and completed the required [sufficient] course work, the institution shall provide written notice to the district that the candidate is eligible to participate in the Kentucky Principal Internship Program in accordance with 16 KAR 7.020.

(b) Upon receipt of the written notification regarding readiness for internship, the employing school district shall submit a Confirmation of Employment in electronic form, or hard copy if the electronic system is unavailable, to the Education Professional Standards Board and shall assign individuals to the Internship committee in accordance with the requirements established in [provisions of] KRS 161.027 and 16 KAR 7.020.

(7)(a) An alternative administrator candidate who failed to complete the assessments, the internship, or the required coursework during the initial issuance and one (1) renewal of the temporary provisional certificate and who has been transitioned into an institution's traditional preparation program, shall be eligible for an administrative certificate in the area of study upon recommendation of the institution after the candidate's completion of the preparation program and the required assessments.

(b) If the candidate was initially enrolled in the alternative program for principal, the candidate shall be eligible for a Statement of Eligibility upon recommendation of the institution after the candidate's completion of the [if an alternative administrator candidate fails to complete the assessments, the internship, or the required coursework during initial issuance and

one renewal of the temporary provisional certificate, the institution may transition a candidate into the institution's traditional preparation program. If such a candidate is enrolled in the alternative program for principal, the institution may recommend the candidate for a Statement of Eligibility upon the candidate's completion of the traditional preparation program and the required assessments.

(8)(a) During the period of enrollment in the alternative administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative administrator program as well as the Superintendent Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required [sufficient] coursework to prepare for the assessments and participation in the Superintendent's Training Program.

Section 5. (1) Upon completion of the alternative program, the assessments, and the Internship or Superintendent's Training Program as applicable, the university shall provide a recommendation for the professional certificate on the candidate's TC-1 form.

(2) Upon verification that a candidate has met all eligibility requirements for certificate issuance, the Education Professional Standards Board shall issue a professional certificate.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Temporary Provisional Certification" Form TC-TP, May 2007;

(b) "Teacher Internship Statement of Eligibility Confirmation of Employment as a Teacher", November 2004; and [rev. November 2004];

(c) [Confirmation of Employment as a Teacher, rev. November 2004];

(d) "Principal Internship Statement of Eligibility Confirmation of Employment as Principal/Assistant Principal in an Accredited Kentucky School", May 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; rev. May 2006; and

(e) Confirmation of Employment as a Principal, rev. May 2005.]

TOM STULL, Chairperson

APPROVED BY AGENCY: March 28, 2007

FILED WITH LRC: April 2, 2007 at 2 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080

# KENTUCKY STATE BOARD OF ELECTIONS (As Amended at ARRS, June 7, 2007)

31 KAR 5:010. Absentee voting for military and overseas citizens for runoff primary elections.

RELATES TO: KRS 116.055, [Chapter] 117.079, 117.085, 118.025, 118.245, 42 U.S.C. 1973

STATUTORY AUTHORITY: KRS 117.079 [SB-8, 1991-Special Session of the GA]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections to promulgate administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. This administrative regulation establishes the requirements and procedures for absentee voting in a runoff primary election for residents

of Kentucky residing outside of the United States and Kentucky residents who are military personnel serving on active duty [This administrative regulation is necessitated by KRS 117.079 [085] which allows [requires] the State Board of Elections to promulgate necessary [issue] administrative regulations to preserve the absentee voting rights of residents of Kentucky who are military [and related] personnel serving on active duty outside the United States and other residents of Kentucky residing outside of the United States.]

Section 1. [Any] Military personnel serving on active duty outside of the United States and other residents of Kentucky residing outside of the United States who were eligible to vote in the primary election, pursuant to KRS 116.055, may vote in a runoff primary election [held pursuant to KRS 118.025, by means of the Federal Write-In Absentee Ballot. [Electronic transmission of absentee ballots for military and related personnel serving on active duty outside the United States shall be permitted in the May 28, 1991 Primary Election.]

Section 2. The procedures established in this section shall apply [Procedures] for voting in a runoff primary election for [these] voters qualified pursuant to [under] Section 1 of this administrative regulation. [.]

(1) In an election year in which the Secretary of State has determined the necessity for holding a runoff primary, the State Board of Elections shall, no later than June 1 [1st], notify the Federal Voting Assistance Program and post on its Web site [website], [www.elect.ky.gov](http://www.elect.ky.gov), the following information:

(a) A notice concerning whether a runoff primary election is to be held;

(b) The list of the slates of candidates certified by the Secretary of State for the runoff primary election;

(c) A link to an electronic version of the Federal Write-In Absentee Ballot; and

(d) A link to the mailing addresses of the county clerks [clerk's] offices in Kentucky.

(2) The voter shall:

(a) Print the Federal Write-In Absentee Ballot using the link from the State Board of Elections' Web site or acquire a hard copy from a military voting assistance officer, embassy, or other appropriate [pertinent] contact person;

(b) Follow the instructions for [en] completing the Federal Write-In Absentee Ballot and, in the "Addendum" section of [en] the Federal Write-In Absentee Ballot, the voter shall cast the [his or her] ballot for the runoff primary election by writing in the office of the candidates in the first column and the name of the slates of candidates for that office for which the voter desires to vote in the second column;

(c) Locate the appropriate county clerk mailing address using the link from the State Board of Elections' Web site; and

(d) [Electronic transmission of an absentee ballot and application to persons authorized by Section 1 of this administrative regulation shall include transmission of the-

(a) Federal post card application to the county clerk from the voter; and

(b) Absentee ballot from the county clerk to the voter.

(2) The voter shall Return the Federal Write-In Absentee Ballot [absentee ballot] by mailing it to the county clerk in either of the following:

1. [(a)] A Federal Write-In Absentee Ballot [an official federal write-in absentee ballot] security envelope, which contains an inner envelope; or

2. [(b)] [.]

(3) If security envelopes are not available, [the Federal Write-In Absentee Ballot] [absentee ballot] [may be returned in] two (2) plain envelopes which contain all of the information on the Federal Write-In Absentee Ballot [official federal write-in absentee] security envelope may be substituted.

(3) [.] and

(e) The Federal Write-In Absentee Ballot shall be received by the appropriate county clerk by 6 p.m. local time on runoff primary election day to be counted.

Section 3. The county clerk shall send by mail or facsimile machine, not later than the close of business hours seven (7) days before the election, the "Notice and Instructions for Voting in Primary Runoff Election for Military and Kentucky Residents Residing Outside of the United States", SBE 48E, to each voter who has timely submitted an absentee ballot application prior to the primary election in order to provide notice and instructions to voters who are military personnel and Kentucky residents residing outside of the United States of [en] the procedures to follow for voting [its vote] in a runoff primary election [The transmission of the absentee ballots by the county clerk shall be accomplished by using the facsimile number provided to the State Board of Elections by the presidential designee pursuant to the Uniform and Overseas Absentee Voting Act 42 U.S.C - 1973ff].

Section 4 (1) Votes cast using the Federal Write-In Absentee Ballot shall not be classified as a write-in vote pursuant to KRS 117.265 if the vote is cast for a slate of candidates certified by the Secretary of State in accordance with Section 2(1)(b) of this administrative regulation [subsection (1)(b) of this section].

(2) The Federal Write-In Absentee Ballot shall not be used for purposes of voter registration or to request an absentee ballot.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Federal Write-In Absentee Ballot", Standard Form 186A, [(Rev.) 10-2005]]; and

(b) "Notice and Instructions for Voting in Primary Runoff Election for Military and Kentucky Residents Residing Outside of the United States", SBE 48E, June [(March) 2007 edition]].

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

This is to certify that this regulation is submitted with the concurrence of the Attorney General pursuant to KRS 117.079.

TREY GRAYSON, Chair

GREGORY D. STUMBO, Attorney General

APPROVED BY AGENCY: March 28, 2007

FILED WITH LRC: April 2, 2007 at 4 p.m.

CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601; phone (502)573-7100, fax (502) 573-4369.

# TEACHERS' RETIREMENT SYSTEM (As Amended at ARRS, June 7, 2007)

## 102 KAR 1:175. Investment policies.

RELATES TO: KRS 161.430

STATUTORY AUTHORITY: KRS 161.310(1), 161.430(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Teachers' Retirement System Board of Trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.430(1) requires the board of trustees to promulgate administrative regulations to establish investment policies and procedures to carry out its [their] responsibilities and ~~and~~ ~~KRS 161.430 also~~ provides that the board of trustees shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and money of the Teachers' Retirement System. This administrative regulation establishes investment policies and procedures to carry out these responsibilities.

Section 1. (1)(a) The board of trustees shall appoint an investment committee in accordance with the provisions of KRS 161.430(1). The trustees shall be named at the beginning of each fiscal year.

(b) The executive secretary shall act on behalf of the investment committee in administering the investment policies and procedures established in this administrative regulation.

(c) To ensure a timely market transaction, the executive secretary and the chief investment officer ~~[deputy executive secretary for investments]~~ may make a purchase or sale of an investment instrument without prior board approval if the action conforms to the provisions established in this administrative regulation.

(2) The staff ~~[internal]~~ investment personnel employed by the board under KRS 161.430(1) may be delegated transaction responsibilities under the supervision of the chief investment officer and the executive secretary.

(3)(a) Contracts with ~~contracted~~ ~~[external]~~ investment counselors employed under KRS 161.430(1) shall be on a fiscal year basis for twelve (12) month periods, except that contracts entered into on or after the start of a fiscal year shall not extend beyond the end of the fiscal year in which the contract is entered.

(b) The system may invest in either separately-managed accounts or commingled funds.

(c) The investment committee shall make recommendations to the board regarding employment of investment counselors and the renewal or nonrenewal of contracts.

(d) ~~The~~ The system may utilize the services of a consultant to advise the investment committee ~~[with regard to such decisions]~~, as well as to assist in evaluating the effectiveness of investment counselors.

2. A consultant may ~~also~~ advise the investment committee with regard to asset class allocation and the combined effect of the various portfolios on the system's overall risk and expected long-term return.

(e) Investment counselors shall provide reports documenting their results at least quarterly and meet with the investment committee ~~if requested~~.

(f) ~~[periodically]~~ An annual report on the performance and service of each investment counselor shall be provided to the board with recommendations from the investment committee.

(4) The following procedures shall be followed with regard to all investment transactions, whether internally or externally managed:

(a) The board shall be provided a quarterly report reflecting a complete record of each investment transaction that occurred during that quarter.

(b) ~~[(3)]~~ The following limitations shall apply to a staff employee who is delegated a transaction responsibility:

(a) The investment committee shall be provided a complete record of each investment transaction or holding ~~[on a regular basis]~~.

(c) ~~[(b)]~~ The staff shall maintain a file of investment directives that indicates the committee's separate review of each specific long-term investment; and

(d) ~~[(e)]~~ An "authorization for investment" shall be approved by the executive secretary or the chief investment officer ~~[deputy executive secretary for investments]~~.

Section 2. Asset Allocation. (1) In order to preserve the assets of the system and produce the required rate of return while minimizing risk, assets shall be prudently diversified among various classes of investments.

(2) In determining asset allocation policy, the investment committee and the board shall be mindful of the system's liquidity and its capability of meeting both short and long-term obligations. The limitations established in this subsection [following limitations] shall apply to the asset classes in which funds are invested.

(a) ~~[(1)]~~ There shall not be a limit on the amount of investments owned by the system ~~if the investments [that] are guaranteed by the United States government.~~

(b) ~~[(2)]~~ The amount invested in corporate debt obligations shall not equal more than thirty-five (35) percent of the assets of the system.

(c) ~~[(3)]~~ The amount invested in common stocks or preferred stocks shall not equal more than sixty-five (65) percent of the assets of the system.

(d) The amount invested in a stock portfolio designed to replicate a general stock index shall not equal more than twenty-five (25) percent of the assets of the system.

(e) ~~[No]~~ More than fifteen (15) percent of the assets of the system shall not be ~~[may]~~ be invested in the stocks of companies

domiciled outside of the United States. [and] Any amounts so invested shall be included in the sixty-five (65) percent limitation established under this subsection.

(f)(4) The amount invested in real estate shall not equal more than ten (10) percent of the assets of the system. Real estate shall include real estate equity, real estate lease agreements, and shares in real estate investment trusts.

(g)(5) The amount invested in alternative investments shall not equal more than ten (10) percent of the assets of the system. This category may include private equity, venture capital, timberland, and infrastructure investments.

(h)(6) The amount invested in an additional category or categories of investments shall not equal more than ten (10) percent of the assets of the system.

2. The board shall approve by resolution any additional category or categories of investments.

Section 3. Fixed Income Investments. The specific guidelines associated with a fixed income investment shall be established in this section. [as follows:]

(1) Unless the issuer is the United States government or a government sponsored enterprise (GSE), the amount invested in the securities of a single issuer shall not equal more than five (5) percent of the assets of the system.

(2)(a) A fixed income investment shall be rated at the time of purchase within the four (4) highest credit classifications identified by one (1) of the major rating services.

(b) A private placement debt investment shall be subject to the same credit qualifications as each fixed income investment.

(c) Notwithstanding the provisions of this subsection [hereinafter], the fixed income investment portfolio as a whole shall maintain an average rating equal to at least the second highest credit classification.

(3) Investments in mortgages or mortgage-backed securities shall consist of first mortgages on property located in the United States unless the mortgage is guaranteed by the United States government.

(4)(a) Debt obligations of Canadian government entities and Canadian-domiciled corporations shall not in aggregate equal more than five (5) percent of the assets of the system.

(b) Other foreign debt shall not be purchased unless approved by the board as an additional category of investment.

Section 4. Equity and Real Estate Investments. The guidelines established in this section [following guidelines] shall apply to equity and real estate investments. [:]

(1)(a) The system's position in a single stock shall not exceed two and one-half (2 1/2) percent of the system's assets.

(b) The system's position in a single stock shall not exceed five (5) percent of the outstanding stock for that company unless the investment is part of a venture capital program.

(2) A real estate purchase that is conducted on a triple net lease basis shall involve a company that at the time of the initial agreement generates one (1) of the three (3) highest credit ratings by a national credit rating service.

(3) A real estate investment shall be judged on its total return potential. The system shall not acquire undeveloped land unless development plans are imminent. This provision shall not preclude investment in timberland.

(4) The system shall not buy bullion, stamps, rare coins, or other collectibles, unless approved by the board as an additional category of investment. [Funds of the Teachers' Retirement System shall be invested within a class or category of investment instruments in accordance with the limitations on an asset class established in subsection (4) of this section.]

(1) The assets allocation parameters shall be structured to:

- (a) Maximize return;
- (b) Provide a prudent diversification of assets; and
- (c) Preserve the capital of the Teachers' Retirement System.

(2) The board shall:

(a) Assume a secure investment that provides long-term growth to the fund; and

(b) Not arbitrarily compromise security to enhance the prospects of a return.

(3) The investment committee and the board shall be mindful of the fund's liquidity and its capability of meeting a short- or long-term obligation.

(4) The following limitations shall apply to the asset classes in which funds are invested:

(a) There shall not be a limit on the amount of investments owned by the system that are guaranteed by the United States government.

(b) The amount invested in corporate debt obligations shall not equal more than thirty-five (35) percent of the assets of the system at book value.

(c) The amount invested in common stocks or preferred stock shall not equal more than sixty (60) percent of the assets of the system at book value. The amount invested in a stock portfolio designed to replicate a general, United States stock index shall not equal more than twenty-five (25) percent of the assets of the system at book value.

(d) The amount invested in real estate shall not equal more than ten (10) percent of the assets of the system at book value. Real estate shall include real estate equity, a real estate lease agreement, a mortgage on real estate that is not guaranteed by the United States government, and a share in a real estate investment trust.

(e) The amount invested in venture capital investments shall not equal more than one (1) percent of the assets of the system at book value. At least seventy-five (75) percent of the venture capital investments shall be in state.

(f) The amount invested in an additional category or categories of investments shall not equal more than ten (10) percent of the assets of the system at book value. The board shall approve by resolution an additional category or categories of investments.

Section 3. (1) The parameters that govern asset allocation shall reflect the overriding concerns by the board of trustees to:

- (a) Preserve the capital assets of the fund;
- (b) Provide opportunities for the fund to realize a rate of growth that will surpass the rate of inflation; and
- (c) Meet the long-term financial obligations of the Teachers' Retirement System.

(2) An investment shall:

- (a) Be identified as a fixed income or equity holding; and
- (b) Comply with the guidelines for an investment established in subsections (3) and (4) of this section.

(3) The specific guidelines associated with a fixed income investment shall be as follows:

(a) A fixed income investment shall:

- 1. Be a direct obligation of:
  - a. The United States government, a United States government agency, state government, or an entity that is organized under the laws of the United States, including a United States corporation that was established in the United States and has a substantial portion of the company owned by a foreign interest; or
  - b. The Dominion of Canada, if the total of Canadian obligations does not exceed five (5) percent of the book value of the entire portfolio; and

2. Not be a foreign debt unless the debt is approved by the board of trustees as an additional category of investments.

(b) A fixed income investment shall be rated at the time of purchase within the four (4) highest credit classifications identified by one (1) of the major rating services. A private placement debt investment shall be subject to the same credit qualifications as each fixed income investment. Notwithstanding the foregoing, the fixed income investment portfolio as a whole shall maintain an average rating equal to at least the second highest credit classification.

(c) An investment purchase shall not equal more than twenty-five (25) percent of a single publicly traded debt issue, unless the investment has a book value of less than \$25,000,000. A private placement debt investment shall not exceed \$20,000,000 in book value for each investment.

(d) Unless the issuer is the United States government or one (1) of its agencies, the amount invested in the securities of a single issuer shall not equal more than five (5) percent of the assets of the system at book value.

(e)1. An investment in a mortgage shall be:  
a. A first mortgage on property located within the United States, or

b. A mortgage guaranteed by the United States government.  
2. A return on a mortgage investment shall reflect its marketability and cash flow.

(f) The management of a fixed income investment shall be regarded as active.

1. If a security can be sold to the long-term benefit of the system, it shall be sold.

2. A bond may be swapped to take advantage of a yield spread between various qualities of bonds or the yield curve that differentiates bond returns by maturity.

3. A security may be sold at a loss if an alternative investment will add to the value of the fund and recoup the loss in a reasonable period of time.

4. The board of trustees and the investment committee shall make each investment for the general enrichment and security of the fund.

(4) The specific guidelines associated with an equity investment shall be as follows:

(a) The system shall not buy bullion, a stamp, rare coin, or other collectible.

(b) The system shall not:

1. Invest in a foreign currency without specific approval from the board of trustees. If the board of trustees approves the purchase of foreign equity, the system may settle a security transaction in a foreign city; and

2. Domicile a security or maintain a cash account in a foreign country.

(c) A stock investment shall be with a corporation that is created under the laws of the United States or that is a component of a major United States stock exchange index unless approved by the board as an additional category of investments. The system may acquire equity in a United States corporation that operates in a foreign country.

(d) Due to the greater risk associated with stock ownership, a stock investment shall be expected to yield a higher return on investment than the highest quality bond.

(e) The system's position in a single stock shall not exceed two (2) percent of the system's assets at book value. The system's position in a single stock shall not exceed five (5) percent of the outstanding stock for that company unless the investment is part of a venture capital program approved by the board of trustees or the investment committee.

(f) A real estate investment shall be judged on its total return potential. The system shall not acquire undeveloped land unless development plans are imminent.

(g) A real estate purchase that is conducted on a triple net lease basis shall involve a company that at the time of the initial agreement generates one (1) of the three (3) highest credit ratings with a national credit rating service.

(h)1. Except as provided in subparagraph 2 of this paragraph, the board of trustees and the investment committee shall avoid the incurrence of a loss.

2. The system may sell equity at a price below its cost to the system if an alternative investment would provide a higher return and permit the loss to be recouped within a reasonable period of time.

Section 4. The investment committee shall evaluate the performance and services of an investment counselor. The committee through the board of trustees shall employ an investment counselor annually. The committee shall review the performance of a counselor recommendation and compare the performance to anticipated performance, efforts of other counselors, and appropriate market indices. The system may utilize the services of a consultant to evaluate a counselor or ascertain the combined effect of several investment counselors and the overall risk levels associated with the investment portfolio. A consultant shall evaluate the effectiveness of an investment manager in maintaining prescribed styles of investment. A periodic report shall be prepared to identify and document the efforts of an investment counselor. An annual report on the performance and service of each investment counselor shall

be provided to the board with recommendations from the investment committee.]

ZELLA WELLS, Chairperson

APPROVED BY AGENCY: March 28, 2007

FILED WITH LRC: March 30, 2007 at 1 p.m.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Veterinary Examiners  
(As Amended at ARRS, June 7, 2007)**

**201 KAR 16:010. Code of ethical conduct.**

RELATES TO: KRS 321.351(1)(h)

STATUTORY AUTHORITY: KRS 321.235(3), 321.351(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.351 provides for the suspension or revocation of a certificate of license, imposition of probationary conditions or an administrative fine, or the issuance of a written reprimand for any violation of the code of ethical conduct promulgated by the board. This administrative regulation sets forth certain acts or inaction which shall constitute a code of ethical conduct for each licensed practitioner.

Section 1. A veterinarian shall take sufficient time and conduct the appropriate tests necessary to diagnose the condition of the patient which he is treating.

Section 2. A veterinarian shall bill accurately and truthfully for services rendered.

Section 3. A veterinarian shall maintain adequate equipment to treat patients that he is called upon to treat in the practice of veterinary medicine.

Section 4. A veterinarian shall maintain his service premises and all equipment in a clean and sanitary condition.

Section 5. A veterinarian shall not issue a certificate of health unless he has personal knowledge through actual examination and appropriate testing of the animal that the animal meets the requirements for the issuance of the certificate.

Section 6. A veterinarian shall not aid or abet the unlawful practice of veterinary medicine.

Section 7. (1) A veterinarian shall not sell, or offer for sale, prescription medicine or drugs at any place other than:

(a) His office, clinic, or hospital; or

(b) Other place where he is treating patients.

(2) The prescription drugs or medicines sold, or offered for sale, shall be used in the treatment of the patient the veterinarian is treating.

(3) A veterinarian may fill the prescription of another licensed veterinarian who has established a bona fide veterinarian-client-patient relationship in a case.

Section 8. A veterinarian shall not engage in false, misleading, or deceptive advertising.

Section 9. A veterinarian shall not write testimonials as to the virtue of drugs, medicines, remedies, or foods except to report the results of properly controlled experiments or clinical studies to interested veterinary organizations and associations.

Section 10. A veterinarian shall keep adequate and sufficient records of the examination and treatment of all patients for a period of five (5) years after the last examination of the patient.

Section 11. A veterinarian shall not represent to the public that he is a board certified specialist in any specialty of veterinary

medicine unless that veterinarian has:

- (1) Been certified by a certifying board approved by the Kentucky Board of Veterinary Examiners; and
- (2) Furnished proof of certification to the board.

Section 12. (1) A veterinarian shall not overutilize his practice.

(2) A practice shall be deemed overutilized if it is excessive in quality or amount relevant to the needs of the patient.

(3) Whether a practice is overutilized shall be determined by considering:

- (a) The patient's history and subjective symptoms;
- (b) Objective findings;
- (c) Reasonable clinical judgment; and
- (d) Other information relevant to the practice of veterinary medicine.

Section 13. A veterinarian shall promptly notify the board of:

- (1) Disciplinary action taken against him; or
- (2) The voluntary surrender of his license to practice veterinary medicine in another jurisdiction; and
- (3) the conviction, in any jurisdiction, of a:
  - (a) Misdemeanor; or
  - (b) Felony.

Section 14. A veterinarian's practice shall conform to the currently accepted standards in the profession of veterinary medicine.

Section 15. A veterinarian shall not engage in fraud, deceit, or misrepresentation in the:

- (1) Procurement of a license to practice veterinary medicine; or
- (2) The practice of veterinary medicine.

Section 16. A veterinarian shall not practice veterinary medicine.

(1) So as to endanger the health and welfare of his patients or the public; or

(2) If his ability to practice with reasonable skill and safety is adversely affected by reason of excessive use of:

- (a) Alcohol;
- (b) Drugs;
- (c) Narcotics;
- (d) Chemicals; or
- (e) Other substances.

Section 17. A veterinarian shall conduct professional activities in conformity with all federal, state, and municipal laws, ordinances or regulations.

Section 18. A veterinarian shall comply with a request by the board to appear before the board or to provide information to the board.

Section 19. A veterinarian shall comply with restrictions on his practice of veterinary medicine imposed by the board with the licensee's consent or after notice and hearing.

Section 20. A veterinarian shall notify the board of the suspension, revocation, or voluntary surrender of his Federal Drug Enforcement Administration registration or his state controlled substances license.

Section 21. (1) A veterinarian shall not abuse or take advantage of the confidence reposed in him by his client.

(2) A veterinarian shall not enter into a business transaction with a client in which the veterinarian and his client have differing interests if the:

- (a) Client reasonably expects the veterinarian to exercise his professional judgment for the protection of the client;
- (b) Veterinarian has not fully disclosed his interest; and
- (c) Client has not consented after full disclosure.

(3) Acceptance of a fee from both the buyer and the seller in a transaction shall constitute prima facie evidence of a conflict of interest.

(4) Acceptance of a fee from a buyer and a seller in an inspection

of an animal for soundness shall constitute a conflict of interest.

Section 22. A veterinarian shall not prescribe, dispense or administer controlled substances except in the course of his professional practice and when a bona fide veterinarian-client-patient relationship has been established.

Section 23. A veterinarian shall maintain a confidential relationship with his clients, except as otherwise provided by law, or required by considerations related to public health or animal health.

Section 24. A veterinarian shall not verbally abuse or harass, nor physically threaten or assault a client, an employee, a board member, or any agent of the board.

Section 25. A veterinarian shall not physically abuse or engage in unnecessary rough handling of a patient under his care.

Section 26. A veterinarian shall not permit a veterinary technician, technician, or assistant to diagnose, prescribe medical treatment, or perform surgical procedures other than the castrating and dehorning of food animals.

Section 27. A veterinarian shall not refuse treatment of a patient on the basis of the client's race, color, sex, religion, national origin, or disability.

Section 28. (1) If treatment is initiated, it shall be completed unless terminated by the client.

(2) A veterinarian shall have the right to refuse to:

- (a) Admit as an inpatient to his hospital or clinic an animal that is not currently vaccinated; or
- (b) Render veterinary medical services for an owner who physically or verbally abuses the veterinarian or his employee.

Section 29. A veterinarian shall not neglect a patient under his care.

Section 30. A veterinarian shall, where possible, preserve the body of any patient which dies while in the veterinarian's care while its owner is away, except as otherwise provided by law.

Section 31. A veterinarian shall obtain the consent of the owner before disposing of any patient which dies while in the veterinarian's care, provided the consent is given within a reasonable time. Any patient disposal shall be done according to all applicable health and safety laws and regulations.

Section 32. A veterinarian shall obtain the consent of the patient's owner or agent before administering general anesthesia or performing any surgical procedure, unless circumstances qualifying as an emergency do not permit obtaining the consent.

Section 33. A veterinarian shall post at his facility and make available over the telephone his policy regarding the hours, emergency coverage, and other similar provisions for the operation of his facility.

Section 34. A veterinarian shall ascertain, before hiring, whether a person who may be hired as a veterinarian has a valid, current Kentucky license to practice veterinary medicine and shall be responsible for ascertaining whether the license to practice veterinary medicine of any veterinarian employee is current.

Section 35. (1) A veterinarian shall attempt to obtain the consent of a patient's owner or agent in writing, if feasible, before:

(a) Euthanizing a patient; or

(b) Transporting a patient to another facility for veterinary medical care or any other reason; [unless circumstances qualifying as an emergency do not permit obtaining such consent].

(2) If it is not feasible to obtain consent in writing, the veterinarian shall obtain oral consent from the patient's owner or agent and document the consent in the medical record.



PERRY W. WORNALL, D.V.M., Chair

JOHN FARRIS, Secretary

APPROVED BY AGENCY: March 7, 2007

FILED WITH LRC: March 7, 2007 at 1 p.m.

CONTACT PERSON: Claude Wagner, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602. phone (502) 564-3296, fax (502) 564-4818.

**GENERAL GOVERNMENT CABINET**

**Kentucky State Board of Licensure for Professional Engineers and Land Surveyors**

(As Amended at ARRS, June 7, 2007)

**201 KAR 18:111. Repeal of 201 KAR 18:110.**

RELATES TO: KRS 322.160, 322.290(4)

STATUTORY AUTHORITY: KRS 160(3)(a), 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. 201 KAR 18:110 establishes the procedure for license renewal and reinstatement. This administrative regulation is being repealed because the procedure for license reinstatement is established in 201 KAR 18 115, making 201 KAR 18.110 redundant.

Section 1. 201 KAR 18:110, License renewals and reinstatement, is hereby repealed.

B. DAVID COX, Executive Director

APPROVED BY AGENCY: April 12, 2007

FILED WITH LRC: April 12, 2007 at 2 p.m.

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.

**COMMERCE CABINET**

**Department of Fish and Wildlife Resources**

(As Amended at ARRS, June 7, 2007)

**301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.**

RELATES TO: KRS 150.010, 150.177, 150.180, 150.390, 150.395, 150.990(11)

STATUTORY AUTHORITY: KRS 150.177, 150.390(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the procedures to obtain a depredation permit to control elk causing property damage. KRS 150.390(4) authorizes the department to establish elk hunting seasons and requirements. This administrative regulation establishes the hunting requirements during the elk hunting season and establishes procedures for applying for and participating in elk quota hunts and the requirements for issuing landowner cooperator permits.

Section 1. Definitions. (1) "Antlered elk" means an elk with one (1) antler possessing four (4) or more antler points that are each at least one (1) inch long when measured from the main beam which also counts as one (1) point. ~~[The main beam shall count as one (1) point.]~~

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(4) "Elk" means ~~[a member of the species]~~ Cervus elaphus nelsoni.

(5) "Limited entry area" means a strategically-located and defined management unit, large in size and consisting of public and

private holdings, where elk populations are encouraged to grow and expand, serving as the source areas for elk within the restoration zone, managed for reduced hunting pressure, and elk-hunting access is limited or restricted to specifically drawn and designated hunters. ~~[The limited entry areas are the Begley/Redbird Limited Entry Area or the Starfire Limited Entry Area, each of whose boundaries are described in Section 4(4) of this administrative regulation.]~~

(6) "Out-of-zone" refers to all counties not included in the restoration area.

(7) "Restoration area" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike ~~(east of and including Knox, Clay, Perry, Breathitt, Magoffin, Johnson, McCreary, Martin), and Whitley.~~

(8) ~~[(7)]~~ "Wild elk" means:

(a) An elk translocated and released by the department; or

(b) The progeny of an elk translocated and released by the department.

(9) ~~[(8)]~~ "Zone-at-large" means any area within the sixteen (16) county restoration area except the limited entry areas.

Section 2. Elk Damage Control. (1) A person shall not kill or attempt to take or molest a wild elk that is causing property damage, except as specified in this administrative regulation.

(2) A person shall contact the department if he wants depredating wild elk removed from his property.

(3) Upon receipt of a damage complaint, the department shall:

(a) Verify that wild elk are causing the damage;

(b) Remove, destroy or authorize the destruction of the elk by the property owner or his designee; and

(c) The property owner or designee shall immediately contact the department upon destruction of the elk.

(4) A person authorized to destroy an elk under the provisions of this section shall not:

(a) Move the elk until he has attached a tag provided by the department to the carcass; and

(b) Remove the tag until the carcass is processed.

Section 3. Quota Elk Hunts. Application procedures and electronic drawing.

(1) ~~The elk hunt application period shall be [A person may apply for the quota elk hunt] December 1 - July 31 for the 2007 quota hunt draw. The application period for all subsequent quota hunt draws shall be December 1 to April 30.~~

(2) A person may apply for the elk quota hunt by visiting the department's Web site at fw.ky.gov, calling 1-877-598-2401 or visiting a KDSS agent and providing the following:

(a) The applicant's name, Social Security number, date of birth, and mailing address or phone (or driver's license) number; and

(b) A ten (10) dollar nonrefundable application fee.

(3) An applicant shall not apply more than once. [may apply once. Duplicate applications shall result in disqualification.]

(4) The commissioner may:

(a) Extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period; and

(b) Authorize the on-site sale of applications during promotional events or festivals.

(5) There shall be no preference points.

(6) There shall be a random electronic drawing.

(7) The drawing and complete results shall be posted on the department's Web site by August 20 of the application year.

(8) ~~[If any individual who was drawn is disqualified for any of the reasons specified in this administrative regulation, an alternate shall be redrawn from the undrawn applicants.]~~

(9) ~~A total of 200 regular drawing tags shall be awarded consisting of sixty (60) antlered and 140 antlerless. Additional either-sex landowner cooperator permits shall be issued with approval of the commissioner.~~

~~[(10)]~~ Two (2) tags, one (1) antlered and one (1) antlerless, shall be available for a special youth-only hunt to be held during the regular seasons, ~~beginning in 2007.~~

(a) Persons fifteen (15) years old or younger, at the time of

application, shall be entered into ~~(eligible to enter)~~ the special youth draw. Those not drawn for the special youth tags shall automatically be entered into the regular draw.

(b) The application period and fee for the special youth draw shall be the same as that for the regular elk hunt.

(c) ~~The fee for entry in the special youth draw shall be ten (10) dollars.~~

(d) The special youth hunt shall be valid for the zone at large area during seasons as set forth in Section 5 of this administrative regulation.

(d) ~~[(e)]~~ Special youth tags shall not be valid for use in limited entry areas except on land owned by the youth's parent or guardian, as described in Section 4 of this administrative regulation.

(9) ~~No more than (11) A resident elk tag shall cost thirty (30) dollars.~~

~~(12) A nonresident elk tag shall cost \$365.~~

~~(13) A maximum of ten (10) percent of all regular tags shall be [randomly] awarded to nonresidents.~~

Section 4. Drawn Applicants and Limited Entry Areas. (1) A person whose name is selected pursuant to this administrative regulation or a person who receives or is transferred a landowner cooperator permit or a special commission permit issued pursuant to 301 KAR 3:100 shall participate in the elk quota hunt as assigned.

(2) An individual selected to participate in a quota hunt or who receives or is transferred a landowner cooperator permit or a special commission permit may be accompanied by up to two (2) other individuals who may assist in the retrieval of the harvested elk.

(3) Drawn applicants shall be assigned:

(a) The sex of the elk they are permitted to take; and

(b) The area they are permitted to hunt, either a limited entry area or zone-at-large, except that a hunter who owns land in a limited entry area and who is drawn for an at-large elk tag may hunt on his or her land during at-large seasons as defined in Section 5 of this administrative regulation.

(4) The limited entry areas shall be designated as follows.

(a) Begley/Redbird Limited Entry Area: starting at the intersection of Kentucky Route 2058 and Route 421 near Helton/Manchester; boundary proceeds south along Route 421 to the intersection of Route 421 and Route 221. The boundary then proceeds west along Route 221 to the intersection of Route 221 and Route 66. The boundary then goes north following Route 66 to the intersection of Route 66 and Route 1850, then east along Route 1850 to the intersection of Route 1850 and Route 1780 at Warbranch. The boundary then proceeds south on Route 1780 to intersection of Route 2058 near Spruce Pine, then east on Route 2058 back to Route 421 at Helton completing the boundary.

(b) Starfire Limited Entry Area: begins at the intersection of Route 1098 and Route 80 near Softshell, Kentucky. The boundary proceeds west along Route 1098 to the junction of Route 1098 and Route 15. The boundary then proceeds south along Route 15 to the junction of Route 15 and Route 476 near Lost Creek, Kentucky. The boundary then turns east along Route 476 to the intersection of Route 476 and Route 80, then east on Route 80 to Route 1098 at Softshell, Kentucky completing the boundary.

(5) A maximum of six (6) tags for antlered elk shall be assigned to each limited entry area.

Section 5. Seasons for Annual Quota Elk Hunts. (1) There shall be three (3) annual elk quota hunts.

(a) There shall be a quota hunt beginning the first Saturday in October, for seven (7) consecutive days for antlered elk on the Starfire and Begley/Redbird Limited Entry Areas and in the zone-at-large.

(b) There shall be a quota hunt beginning the second Saturday in December, for seven (7) consecutive days for antlerless elk on the Starfire and Begley/Redbird Limited Entry Areas.

(c) There shall be a quota hunt beginning the second Saturday in December, for fourteen (14) consecutive days for antlerless elk in the restoration zone at-large.

(d) An ~~[(either-sex)]~~ archery season for zone-at-large antlered elk permit holders shall be held from the first Saturday in October through the third Monday in January.

(e) An archery season for zone-at-large antlerless elk permit holders shall be held from the second Saturday in October through the third Monday in January.

(f) Crossbows shall be legal for antlered elk from the first Saturday in October through the third full weekend in October and from the second Saturday in November through December 31.

(g) Crossbows shall be legal for antlerless elk from the second Saturday in October through the third full weekend in October and from the second Saturday in November through December 31.

(2) Legal weapons. All hunters may use any legal weapon for deer hunting except as provided by subsection (4) of this section. A handgun used to hunt elk must have a barrel length of at least six (6) inches, have a bore diameter of 0.270 inches (.270 caliber) or greater, and when fired, the bullet must produce at least 550 ft/lbs of energy at 100 yards.

(3) Limits.

(a) A quota elk hunter shall only take one (1) elk of the sex determined by the tag drawn.

(b) An individual who receives or is transferred an either-sex landowner cooperator permit or a special commission permit may hunt in either the antlered only or antlerless only quota hunts, providing the tag has not been filled but is held to the season bag limit.

(4) Illegal hunting equipment. A person shall not use or possess while elk hunting:

(a) A device capable of taking an elk except a firearm, crossbow or archery equipment;

(b) A modern firearm of less than .27 caliber;

(c) A muzzle-loading firearm of less than .50 caliber;

(d) A shotgun of less than 20 gauge;

(e) Rimfire ammunition;

(f) A fully-automatic firearm;

(g) A firearm with a magazine capacity greater than ten (10) rounds;

(h) Full metal [Steel] jacketed ammunition;

(i) Tracer bullet ammunition;

(j) A shotgun shell containing more than one (1) projectile;

(k) A broadhead smaller than seven-eighths (7/8) inch wide;

(l) A barbed broadhead;

(m) A crossbow without a working safety device;

(n) A chemically-treated arrow; ~~or~~

(o) An arrow with a chemical attachment; or

(p) Any arrow without a broadhead point

(5) Hunter orange. ~~[(a)]~~ During the firearm elk season, all hunters hunting within the sixteen (16) county elk restoration zone shall display solid, unbroken hunter orange visible from all sides on the head, back and chest pursuant to 301 KAR 2:172, Section 4, and 301 KAR 2:178, Section 3(7).

~~[(b) The hunter orange portions of a garment worn to fulfill the requirements of this section:~~

~~1. May display a small section of another color; and~~

~~2. Shall not have mesh-weave openings exceeding one-fourth (1/4) inch.~~

~~(c) A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.]~~

(6) Hunter requirements.

(a) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the juvenile's firearm.

(b) An adult accompanying a juvenile hunter shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(c) An elk hunter or any person accompanying the elk hunter:

1. May be in the field, woods or stands before or after daylight hours, but shall not take elk except during daylight hours;

2. Shall not use dogs, except for leashed tracking dogs to recover wounded elk;

3. Shall not use bait;

4. Shall not drive elk from outside his assigned area;

5. Shall not take swimming elk;

6. Shall not use electronic calls or electronic decoys; and

7. Shall not take an elk while in a vehicle or boat, or on horseback. A hunter may use a vehicle as a hunting platform if he has a disabled hunting exemption permit issued by the department.



(d) An elk hunter shall display a hang tag, issued by the Department, in the windshield of his vehicle at all times while hunting elk.

(7) Tagging, check-in requirements, and bag limit.

(a) Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

1. Attach the tag portion of the permit to the carcass before moving the carcass; and

2. Telecheck the elk by calling the toll-free number listed in the current fall hunting and trapping guide and recording the confirmation number on a hunter's log.

(b) Prior to hunting, the limited entry area hunters shall check in at the following locations:

1. Starfire Limited Entry Area- Robinson Forest;

2. Begley Limited Entry Area - Blanton Forest Boy Scout Camp.

(c) A person checking in for a limited entry area quota hunt shall show his Social Security number, and valid hunting license, except a person on military furlough for more than three (3) days may show his military identification instead of a license.

(d) The season bag limit shall be one (1) elk per hunter. [Before removing the carcass from the field, limited entry area hunters shall telecheck their elk by calling 1-800-245-4263 and record the confirmation number on a hunter's log. Limited entry area hunters are also required to check out at the locations listed in subparagraphs 1 and 2 of this paragraph.]

(e) Before removing the carcass from the field, zone-at-large hunters shall telecheck their elk by calling 1-800-245-4263 and record the confirmation number on a hunter's log.]

**Section 6. Elk Hunting on Public Land.** (1) An individual who has been drawn to hunt in the elk hunt, or who either receives or is transferred a special commission permit, may hunt on all Wildlife Management Areas, state forests, Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National [Nation] Forest within the sixteen (16) county elk zone under the conditions of the type of tag they receive.

(2) Public land that lies within a Limited Entry Area shall be managed pursuant to Sections 4 and 5 of this administrative regulation.

(3) Public land that lies within the zone-at-large shall be managed pursuant to Sections 4 and 5 of this administrative regulation.

(4) Portions of Paintsville Lake WMA lie outside the sixteen (16) county elk restoration zone and are subject to the requirements established in Section 8 of this administrative regulation.

(5) Elk hunting shall not be [is-not] allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(6) Hunter orange requirements shall be in effect.

**Section 7. Landowner Cooperator Permits.** (1) With the approval of the commission, the commissioner may issue either-sex elk permit(s) each year of the agreement to qualified landowners or lessees who enter into a five (5) year public hunting and access agreement with the department.

(2) To qualify, landowners or lessees shall own or lease 5,000 acres of elk habitat to which he or she, and the lessor, if applicable, agrees to allow public hunting and access.

(3)(a) A landowner cooperator permit is transferable, but shall be used on the land for which the memorandum of agreement was made.

(b) The permit may be transferred to any person eligible to hunt in Kentucky.

(c) The landowner or agent identified in the memorandum of agreement for that property shall provide to the department the following information for each person to whom a permit will be transferred:

1. Name;
2. Social Security number;
3. Address; and
4. [2-] Telephone number.

(d) If the permit is sold, the landowner or agent shall provide to the department:

1. The gross sale price for the permit; and
2. How the proceeds of the sale will be used in Kentucky for

wildlife management.

(e) The permit shall be issued by the department directly to the recipient specified by the landowner or agent.

(4) One (1) landowner cooperator permit shall be issued for each 5,000 [-]acres of land included in the agreement.

(5) Public access agreements with the department shall be memorialized in memorandums of understanding.

(6) Recipients of landowner cooperator permits shall comply with the provisions of this administrative regulation including seasons, legal methods of taking and other elk hunting requirements.

(a) Landowner cooperator land that resides within a limited entry area shall be managed pursuant to Sections 4 and 5 of this administrative regulation.

(b) Landowner cooperator land that resides within the zone-at-large shall be managed pursuant to Sections 4 and 5 of this administrative regulation.

**Section 8. Hunting Elk Outside of the Sixteen (16) County Restoration Zone.** (1)(a) A person may hunt elk in counties other than the sixteen (16) county restoration zone.

(b) The restoration zone counties are-

1. Bell;
2. Breathitt;
3. Clay;
4. Floyd;
5. Harlan;
6. Johnson;
7. Knott;
8. Knox;
9. Leslie;
10. Letcher;
11. Mageffin;
12. Martin;
13. McCreary;
14. Perry;
15. Pike; and
16. Whitley.]

(2) The methods of taking and seasons established in 301 KAR 2:172 and 301 KAR 2:174 shall apply to taking elk outside of the sixteen (16) county restoration zone.

(a) In order to harvest an out-of-zone elk, a hunter shall [must] be a legal deer hunter and shall purchase [have purchased] an out-of-zone elk permit. [during the 2006-2007 season, a hunter must be a legal deer hunter and have purchased a ten-(10) dollar 2006 elk-drawing permit. Elk hunt drawing permits may be purchased after July 31 to allow potential out-of-zone elk hunters to take out-of-zone elk in compliance with the permit requirements set forth in Section 8 of this administrative regulation. Purchases made after July 31 shall not be eligible for or entered into the hunt drawing. Beginning March 1, 2007, out-of-zone permits shall be available for the 2007 season and shall be thirty (30) dollars for residents and \$365 for nonresidents.]

(b) Landowners are exempt from this permit requirement as per KRS 150.170.

(3) Either sex elk may be taken and shall not count towards the deer bag limit.

(4) [There shall be a bag limit of one (1) out-of-zone elk per hunter.

(5) Elk harvested outside of the restoration zone shall be telechecked prior to removal of the carcass [by calling 1-800-245-4263 and [reecording] the confirmation number shall be recorded on a hunter's log.

**Section 9** A person who takes possession of any elk antler that has the skull or skull plate attached to it, not including sheds, shall call the Law Enforcement Division at 1-800-25ALERT within twenty-four (24) hours. [(6) A person shall report the pickup of any elk antler that has the skull or skull plate attached to it, not including sheds. A person shall call the Department Law Enforcement at 1-800-ALERT within twenty-four (24) hours.]

MARK S. CRAMER, Deputy Commissioner  
For DR. JONATHAN W. GASSETT, Commissioner  
GEORGE WARD, Secretary

APPROVED BY AGENCY: March 9, 2007

FILED WITH LRC: April 11, 2007 at 3 p.m.

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.

**COMMERCE CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, June 7, 2007)**

**301 KAR 2:172. Deer hunting seasons, zones, and requirements.**

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 grants the department authority to establish hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes deer hunting seasons and zones, prescribes legal methods of taking and establishes tagging and checking requirements for deer hunting

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Antlered deer" means a deer with a visible antler protruding above the hairline.

(3) "Antlerless deer" means a deer with no visible antler protruding above the hairline, including female deer and male fawns (button bucks).

(4) "Archery equipment" means a long bow, recurve bow or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(5) "Arrow" means the projectile fired from a bow or crossbow.

(6) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(7) "Bonus antlerless permit" means a permit which, in conjunction with appropriate licenses and permits, seasons and methods, allows the holder to take two (2) additional antlerless deer.

(8) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(9) "Deer" means a member of the species *Odocoileus virginianus*.

(10) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(11) "Firearm" means a breech or muzzle-loading rifle, shotgun or handgun.

(12) [(14)] "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull of the trigger.

(13) [(12)] "License year" means the period from March 1 through the following last day of February.

(14) [(13)] "Modern gun" means a rifle, handgun or shotgun which is loaded from the rear of the barrel.

(15) [(14)] "Muzzle-loading gun" means a rifle, shotgun or handgun which is loaded from the discharging end of the barrel or discharging end of the cylinder.

(16) [(15)] "Shotshell" means ammunition containing more than one (1) projectile.

(17) [(16)] "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) either-sex deer and one (1) antlerless-only deer.

[(17) "Zone" means the grouping of counties as stipulated in 301 KAR 2:174, Deer hunting zones.]

(18) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(19) "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170, a person hunting deer shall have proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting

(2) In lieu of a statewide deer permit, a person possessing a valid junior statewide hunting license may use no more than two (2) junior deer hunting permits. ~~[No more than one (1) permit shall be used for taking an antlered deer.]~~

(3) Unless exempted by KRS 150.170, a person hunting wild hogs or coyotes during a season or Wildlife Management Area hunt where a firearm is allowed for deer hunting, shall have proof of purchase of a valid Kentucky hunting license and valid deer permit.

(4) A person whose name does not appear on a license or permit shall not use that license or permit to harvest deer.

(5) Unless exempted by KRS 150.170, bonus antlerless permits shall not be valid unless accompanied by a valid Kentucky hunting license and statewide deer permit.

Section 3 Hunter Restrictions. (1) A deer hunter:

(a) ~~[May be in the woods or stands before or after daylight hours, but]~~ Shall not take deer except during daylight hours;

(b) Shall not use dogs, except he or she may use leashed tracking dogs to recover wounded deer;

(c) Shall not take swimming deer; and

(d) Shall not take deer from a vehicle, boat, or while on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(2) A deer hunter shall not take a deer with any device except a firearm, crossbow or archery equipment.

(3) A deer hunter shall not use or possess while deer hunting:

(a) Rimfire ammunition;

(b) A fully-automatic firearm;

(c) A firearm with a magazine capacity greater than ten (10) rounds;

(d) Full metal [Steel]-jacketed ammunition;

(e) Tracer bullet ammunition;

(f) A shotshell containing larger than number two (2) size shot;

(g) A broadhead smaller than seven-eighths (7/8) inch wide;

(h) A barbed broadhead;

(i) A crossbow without a working safety device;

(j) A chemically-treated arrow; ~~[or]~~

(k) An arrow with a chemical attachment; or

(l) An electronic call or electronic decoy.

(4) Persons hunting deer shall not carry a firearm, except when a firearms deer season is open.

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season or the youth firearm season, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back and chest.

(2) During the elk firearm season, a person hunting any species, and any person accompanying a hunter within the sixteen (16) county elk zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest.

(3) These requirements shall not apply to a person:

(a) Hunting waterfowl; or

(b) Hunting at night.

(4) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(5) A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern firearm state-

wide beginning the second Saturday in November:

- (a) For sixteen (16) consecutive days in Zones 1 and 2; and
- (b) For ten (10) consecutive days in Zones 3 and 4.

(3) A deer hunter may use a muzzle-loading gun statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season when a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31, and

(c) During any season when a firearm may be used to take deer.

(5) Youth firearms season. For two (2) consecutive days beginning on the second Saturday in October, a youth may take antlered or antlerless deer with a firearm.

(6) Free youth weekend. For two (2) consecutive days beginning on the Saturday after Christmas, a youth may hunt deer without a hunting license or deer permit. Statewide bag limits and harvest-reporting requirements shall apply.

**Section 6. Zones.** (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Hardin, Harrison, Henry, Hickman, Jefferson, Kenton, Livingston, Lyon, Marion, Marshall, McCracken, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Taylor, Tigg, Trimble, Washington, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bourbon, Boyd, Boyle, Breckinridge, Butler, Caldwell, Carter, Casey, Cumberland, Daviess, Edmonson, Fayette, Fleming, Grayson, Green, Greenup, Hancock, Hart, Henderson, Hopkins, Jessamine, Lane, Lawrence, Lewis, Logan, Mason, McLean, Meade, Mercer, Metcalfe, Monroe, Muhlenberg, Nicholas, Ohio, Rowan, Simpson, Todd, Union, Warren, and Webster Counties.

(3) Zone 3 shall consist of Bath, Clark, Clinton, Elliott, Estill, Garrard, Johnson, Knox, Laurel, Lee, Lincoln, Madison, Menifee, Montgomery, Morgan, Powell, Russell, Whitley, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Floyd, Harlan, Jackson, Knott, Leslie, Letcher, Magoffin, Martin, McCreary, Owsley, Perry, Pike, Pulaski, Rockcastle, and Wayne Counties.

**Section 7. Season and Zone Limits.** (1) Except as provided in 301 KAR 2:111, 301 KAR 2:176, and 301 KAR 2:178, [301 KAR 2:411 and 301 KAR 2:476,] in a license year, a person shall not take more than:

(a) One (1) antlered deer;

(b) The number of antlerless deer permitted in the zones specified in subsections (2) and (3) of this section; or

(c) The total number of deer permitted in the zones specified in subsections (2) and (3) of this section.

(2) In zone 1, a person may take an unlimited number of antlerless deer, provided that the person has purchased the appropriate bonus antlerless permits.

(3) In zones 2, 3 and 4, a person may take a total number of four (4) deer, provided that the person has purchased the appropriate bonus antlerless permits.

(4) Legal weapons. A person shall take deer only with the weapons specified for each zone below:

(a) Zones 1 and 2. Deer may be taken with any weapon;

(b) Zone 3. Only two (2) deer may be taken with a firearm; and

(c) Zone 4.

1. Only two (2) deer may be taken with a firearm; and

2. Antlerless deer shall not be legal during the modern firearm season or the early muzzleloader season.

**Section 8. [7-] Supervision of Youth Firearms Deer Hunters.** (1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's firearm.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

(3) An adult accompanying a youth during the youth firearm season shall not carry a firearm.

**Section 9. [8-] Harvest Recording.** Immediately after taking a deer, a person shall:

(1) Record, in writing, the species, date taken, county where taken, and sex of the deer before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:

(a) Hunter's log section on the reverse side of a license or permit;

(b) Hunter's log produced in a hunting guide;

(c) Hunter's log printed from the Internet;

(d) Hunter's log available from any KDSS agent; or

(e) An index card or reasonable facsimile thereof; and

(2) Retain the completed hunter's log in his possession whenever the hunter is in the field during the current season.

**Section 10. [9-] Checking a Deer.** (1) A person shall check a harvested deer by:

(a) Calling the toll free number listed in the current fall hunting and trapping guide on the day the deer is harvested prior to processing or removing the hide or head from the carcass;

(b) Providing the information requested by the automated check-in system; and

(c) Entering the confirmation number given by the system on the hunter's log described in Section 9 [8] of this administrative regulation.

(2) If a harvested deer leaves the possession of a hunter, the hunter shall attach a hand-made tag, which contains the confirmation number, hunter's name, and a phone number, to the carcass.

(3) A person shall not knowingly provide false information when completing the hunter's log, checking a deer, or creating a carcass tag.

**Section 11. [10-] Transporting and Processing Deer.** (1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken;

(c) Not submit deer taken outside Kentucky or in violation of any governing statute or administrative regulation for a state or national trophy deer listing; and

(d) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or other individual who commercially butchers deer shall:

(a) Not accept deer carcasses or any part of a deer without a proper carcass tag described in Section 10 [9] of this administrative regulation.

(b) Keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in his possession, and retain such records for a period of one (1) year.

MARK S. CRAMER, Deputy Commissioner

For DR. JONATHAN W. GASSETT, Commissioner

GEORGE WARD, Secretary

APPROVED BY AGENCY: March 9, 2007

FILED WITH LRC: April 11, 2007 at 3 p.m.

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.

COMMERCE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, June 7, 2007)

301 KAR 2:195. Raptor propagation and falconry.

RELATES TO: KRS 150.010, 150.025, 150.180, 150.183, 150.290, 150.305, 150.320, 150.330, 150.360, 50 C.F.R. Parts 13, 17, 21, 22

STATUTORY AUTHORITY: KRS 150.025, 150.028 [43A.360], 50 C.F.R. Parts 13, 17, 21, 22

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations governing the taking of wildlife, 50 C.F.R. Parts 13, 17, 21, and 22 authorize the protection of endangered species and birds of prey. This administrative regulation establishes the requirements for the propagation of raptors and for falconry. [This administrative regulation pertains to the securing and use of birds of prey for breeding and hunting. It is necessary for the continuing protection and conservation of the birds of prey to insure a permanent and continued supply of this wildlife resource for the purpose of furnishing biological diversity, sport and recreation for present and future residents of the state. This administrative regulation is also necessary to comply with corresponding federal regulations.]

Section 1. Definitions. (1) "Exotic raptor" means those species which have no subspecies occurring in the wild in the United States or Mexico and which require the holding of a joint state and federal falconry permit to lawfully possess.

(2) "Legal hunting raptor" means the great horned owl (*Bubo virginianus*) and all hawks and falcons of the families *Falconidae* and *Accipiteridae*, except those that are endangered or threatened and under conditions described in Section 4(1)(c) of this administrative regulation, golden eagles (*Aquila chrysaetos*) as well as threatened species.

Section 2. Except as provided by Sections 3 through 11 of this administrative regulation, C.F.R. Part 13, General Permit Procedures; Part 17, Subpart 17.11, Endangered and Threatened Wildlife; Part 21, Migratory Bird Permits; and Part 22, Eagle Permits shall apply to the propagation of raptors and falconry.

Section 3. Hunting License, Falconry Permit Requirements and Transportation Permit Waiver. (1) Wildlife may be taken within state hunting seasons and bag limits with any legal hunting raptor provided the falconer has a valid state or federal falconry permit and a valid Kentucky resident or nonresident hunting license in his or her possession.

(2) A licensed falconer may undertake intrastate transportation of any legally held raptor without possessing a transportation permit as required in 301 KAR 2:081 and 2:082.

Section 4. Classes of Falconry Permits, Sponsors, Application, Processing and Issuance, Examination Required, Duration of Permits and Fees. (1) Classes of falconry permits.

(a) Apprentice falconry permits.

1. An apprentice falconer shall be at least fourteen (14) years of age and shall have a sponsor holding a general or master falconry permit.

2. An applicant between the ages of fourteen (14) and sixteen (16) years shall provide a written consent form or letter from a parent or guardian.

3. An apprentice may take and possess only one (1) non-exotic raptor, which shall be taken from the wild, and shall not take more than one (1) replacement from the wild during any twelve (12) month period which begins when the first replacement raptor is taken from the wild.

4. Only an American kestrel (*Falco sparverius*), red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo lineatus*), or any exotic legal hunting raptor may be possessed or taken by an apprentice falconer.

5. The red-tailed and red-shouldered hawks shall be first

year (passage) age class birds, capable of flight.

6. Any American kestrel which has left the nest and is capable of flight may be taken from the wild.

7. There shall be no age restriction on exotic raptors.

8. An apprentice falconer may buy and sell only exotic raptors.

(b) General falconry permits.

1. A general permittee shall be:

a. At least eighteen (18) years of age;

b. Have at least two (2) years experience in the practice of falconry at the apprentice level; and

c. Have complied with all reporting requirements of this administrative regulation.

2. A permittee at the general level may possess no more than two (2) nonexotic raptors and shall not take more than two (2) replacements from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild.

3. A general permittee may take and possess any legal hunting raptor defined in this administrative regulation.

(c) Master falconry permits.

1. A master permittee shall have at least five (5) years experience in the practice of falconry at the general class level and have complied with all requirements of this administrative regulation.

2. A master permittee may possess no more than three (3) nonexotic raptors.

3. No more than two (2) raptors for replacement birds shall be taken from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild.

4. A master permittee may take and possess any legal hunting raptor, but shall not take, in any twelve (12) month period, as part of the three (3) bird limitation, more than one (1) raptor listed as threatened in 50 C.F.R. Part 17, Subpart B, Section 17.11, and then only when approved by the U.S. Fish and Wildlife Service and the Department of Fish and Wildlife Resources.

5. A master falconer may replace any number of captive bred raptors a year if the possession limit at one (1) time is not exceeded.

6. If a permit has been issued by the department and in accordance with the Bald Eagle Protection Act and 50 C.F.R. Part 22, Subpart B, Section 22.24, a master permittee may take and possess golden eagles for falconry purposes.

7. A master permittee shall not take any species listed as endangered by 50 C.F.R. Part 17, Subpart B, Section 17.11, but may possess those species in accordance with the Endangered Species Act and implementing regulations.

(2) Sponsors.

(a) A sponsor shall hold a master or general falconry permit.

(b) A sponsor shall not have more than three (3) apprentices at any one (1) time.

(c) A sponsor withdrawing sponsorship shall notify the department in writing giving reasons for withdrawal and shall notify the apprentice.

(d) If the apprentice does not have a new sponsor within thirty (30) days from the date of notification of withdrawal, his or her permit shall be deemed cancelled and the birds relocated.

(3) Application, processing and issuance.

(a) In order to obtain any class of joint state/federal falconry permit, an applicant shall complete the standard falconry permit application form (KYF-1), incorporated by reference in Section 12 of this administrative regulation, as designated by the Department of Fish and Wildlife Resources and approved by the U.S. Fish and Wildlife Service.

(b) Accompanying the completed application shall be two (2) checks:

1. One (1) payable to the Department of Fish and Wildlife Resources in the amount specified for a falconry permit in 301 KAR 3:022; and

2. One (1) payable to the U.S. Fish and Wildlife Service in

the amount specified in 50 C.F.R. Part 13, Subpart B, Section 13.11.

(c) Also accompanying the application shall be an inventory of raptors which the applicant possesses at the time of application as specified in Section 6(1) of this administrative regulation and 50 C.F.R. Part 21, Subpart C, Section 21.28.

(d) Upon receipt of a completed application, inventory and fees, the application shall be forwarded to the appropriate state conservation officer who shall administer the required examination and inspect equipment and facilities.

(e) If the equipment and facilities are found to be adequate and the applicant passes the examination as specified in subsection (4) of this section, the state conservation officer shall certify that by affixing his signature on a letter of recommendation, and the Department of Fish and Wildlife Resources shall forward the application, certification, appropriate fee and test score to the U.S. Fish and Wildlife Service.

2. The U.S. Fish and Wildlife Service may then issue the permit according to the applicable terms and conditions of 50 C.F.R. Parts 13, 21, or 22.

(4) Examination required. 3

(a) An applicant for any class of falconry permit shall take an appropriate written examination and score no less than eighty (80) percent.

(b) The test shall be approved in accordance with 50 C.F.R. Subpart C, Part 21.29(f) and shall be administered and supervised by the Department of Fish and Wildlife Resources at a designated site.

(5) Duration of permits. A permit shall be valid for a period of three (3) years from date of issuance.

(6) Fees. Falconry permit fees are as listed in 301 KAR 3:022.

**Section 5. Facilities and Equipment.** (1) Facilities and equipment shall meet the minimum standards described in 50 C.F.R. Part 21, Subpart C, Section 21.29.

(2) Facilities, equipment and raptors shall be made available at all times for inspection by authorized personnel of the Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service.

**Section 6. Marking.** Any peregrine falcon (*Falco peregrinus*), gyrfalcons (*Falco rusticolus*) and Harris hawks (*Parabuteo unicinctus*) shall be banded with markers supplied by the U.S. Fish and Wildlife Service at all times according to provisions of 50 C.F.R. Part 21, Subpart C, Section 21.29.

**Section 7. License Requirements and Conditions for Taking Raptors From the Wild.** (1) License requirements.

(a) A holder of a Kentucky falconry permit shall have in his or her possession a valid annual Kentucky hunting license before taking any raptor from the wild.

(b) Before taking a raptor from the wild, a nonresident shall have a Kentucky nonresident annual hunting license and joint state/federal permit or individual state and federal falconry permits from his or her home state and a special permit from the Department of Fish and Wildlife Resources.

(c) Application for a special permit shall be made by writing the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, at least fifteen (15) days in advance of the date on which the permit is desired, and describing the nature of the request, the applicant's name, address, and the status and number of the federal/state falconry permit.

(2) Conditions for taking raptors from the wild.

(a) Eyas.

1. A young bird not yet capable of flight (eyas) may be taken only by a general or master falconer and only during the period May 12 through July 14.

2. No more than two (2) eyases shall be taken from the wild by the same permittee during this period.

3. At least one (1) young shall be left in any nest from which raptors are taken.

(b) Passage birds. A first year (passage) bird may be taken

only during the period September 7 through December 31.

(c) Retrapping. A raptor may be retrapped only in accordance with 50 C.F.R. Part 21, Subpart C, Section 21.29.

(d) Mature birds.

1. Only the American kestrel and the great horned owl may be taken when over one (1) year old, except that any legal hunting raptor taken under a depredation or special purpose permit may be used for falconry by general and master falconers.

2. A trap or other device for taking raptors alive shall be tagged with the owners' name and address.

(e) A raptor taken from the wild shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28, 21.29 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources at the same time.

**Section 8. Raptors Acquired Before 1977.** (1)(a) A person possessing a raptor legally acquired before January 1, 1977, and who fails to meet the permit requirements, shall be allowed to retain the raptor with a nonhunting raptor permit.

(b) These raptors shall not be replaced nor used for hunting.

(c) Facilities and equipment for holding them shall meet the standards in Section 5 of this administrative regulation.

(2) A falconry permittee legally possessing raptors acquired before January 1, 1977, in excess of the number allowed under his class permit, shall be allowed to retain and hunt the extra raptors. Replacement of those raptors shall not occur, nor shall an additional nonexotic raptor be obtained, until the number in possession is at least one (1) less than the total number authorized by the class of permit held by the permittee.

**Section 9. Importation, Trading or Transferring, Purchasing, Bartering or Selling, Temporary Care and Feathers of Raptors.** (1) Importation. A holder of a valid falconry permit may transport any legally held raptor into or within the state of Kentucky without a transportation permit from the Department of Fish and Wildlife Resources as required in 301 KAR 2:081 and 2:082.

(2) Trading or transferring.

(a) Any class falconry permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within the state of Kentucky and no money or other consideration is involved.

(b) A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of all states involved is obtained and no money or other consideration is involved in the transaction, except as allowed in 50 C.F.R. Part 21, Subpart C, Section 21.28(d)(8).

(c) This transaction shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources at the same time.

(3) Purchasing, bartering or selling. General and master class permittees may purchase, barter or sell any lawfully possessed raptor which is bred in captivity under authority of a raptor propagation permit issued pursuant to 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30, subject to the following conditions:

(a) Any permittee who buys from, sells to or barter with any person in the United States or a foreign country shall meet the conditions specified in 50 C.F.R. Part 21, Subpart C, Section 21.30(d)(5).

(b) A raptor propagation permittee who sells or barter raptors shall have a commercial captive wildlife permit issued by the Department of Fish and Wildlife Resources according to provisions of 301 KAR 2:081;

(c) All transactions shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources at the same

time.

(4) Temporary relocation of raptors. A raptor may be temporarily held for a permittee only by an individual who is authorized to possess raptors, and subject to all other conditions in 50 C.F.R. Part 21, Subpart C, Section 21.29(i)(4).

(5) Feathers. Molted feathers or feathers from birds that die in captivity, may be retained and exchanged by permittees only for limping purposes.

Section 10. Release of Raptors. (1) A person shall not intentionally release to the wild any species not native to Kentucky without first obtaining written permission from the commissioner.

(2) The marker from the released bird shall be removed and surrendered to the department.

(3) The marker from an intentionally released indigenous bird shall also be removed and surrendered to the department.

(4) A federal bird band shall be affixed to a captive bred raptor intentionally released to the wild.

Section 11. Raptor Propagation Requirements, Authorized Activities, Applications, Records, and Reports. (1) Raptor propagation requirements.

(a) A person shall not breed or propagate raptors without obtaining the appropriate Kentucky captive wildlife permit as required in 301 KAR 2:081.

(b) A commercial captive wildlife permit authorizes the propagation and sale of raptors.

(c) A noncommercial permit authorizes only propagation.

(d) A permittee shall comply with all requirements, including permit application, of 50 C.F.R. Part 21, Subpart C, Section 21.30.

(2) Authorized activities. All activities permitted by 50 C.F.R. Part 21, Subpart C, Section 21.30 are authorized in Kentucky except as otherwise noted in this administrative regulation.

(3) Applications, records, and reports. A copy of all raptor propagation applications, records, and reports required by the U.S. Fish and Wildlife Service in 50 C.F.R. Part 21, Subpart C, Section 21.30, shall be submitted to the Department of Fish and Wildlife Resources on the same dates as required by 50 C.F.R. Part 21, Subpart C, Section 21.30.

Section 12. Incorporation by Reference. (1) Standard falconry permit application form (KYF-1), (12/6/06) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Kentucky Department of Fish and Wildlife, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 am to 4:30 pm. ["Legal hunting raptor" includes the great horned owl (*Bubo virginianus*) and all hawks and falcons of the families Falconidae and Accipiteridae, except those that are endangered or threatened. Under conditions described in Section 4(1)(e) of this administrative regulation, golden eagles (*Aquila chrysaetos*) as well as threatened species, may be used for falconry.

(2) "Exotic raptors" means those species which have no subspecies occurring in the wild in the United States or Mexico. Any person holding a joint state/federal falconry permit may possess lawfully acquired exotic raptors in addition to the number of nonexotic raptors legally held.

Section 2. Articles Incorporated by Reference: Title 50 - Wildlife and Fisheries, Code of Federal Regulations (C.F.R.), Part 13 - General Permit Procedures, Part 17, Subpart B, Section 17.11 - Endangered and Threatened Wildlife, Part 21 - Migratory Bird Permits and Part 22 - Eagle Permits, September 14, 1989. Copies of these documents are available for review weekdays from 8 a.m. - 4:30 p.m. in the offices of the Department of Fish and Wildlife Resources, #1 Sportsman's Lane [Game Farm Road], Frankfort, Kentucky 40601. Copies may be obtained from the U.S. Fish and Wildlife Service, 75 Spring Street, Atlanta, Georgia 30359 [30303].

Section 3. Hunting License, Falconry Permit Requirements and

Transportation Permit Waiver. Wildlife may be taken within state hunting seasons and bag limits with any legal hunting raptor provided the falconer has in possession a valid state/federal falconry permit(s) and a valid Kentucky resident or nonresident hunting license. Licensed falconers may undertake intrastate transportation of any legally held raptor without possessing a transportation permit as required in 301 KAR 2:081 and 2:082 [2:080].

Section 4 - Classes of Falconry Permits, Sponsors, Application, Processing and Issuance, Examination Required, Duration of Permits and Fees. (1) Classes of falconry permits.

(a) Apprentice falconry permits. Apprentice falconers shall be at least fourteen (14) years of age and shall have a sponsor holding a general or master falconry permit. Applicants between the ages of fourteen (14) and sixteen (16) years shall provide a written consent form or letter from a parent or guardian. An apprentice may take and possess only one (1) nonexotic raptor, which shall be taken from the wild, and shall not take more than one (1) replacement from the wild during any twelve (12) month period which begins when the first replacement raptor is taken from the wild. Only an American kestrel (*Falco sparverius*), red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo lineatus*), or any exotic legal hunting raptor may be possessed or taken by an apprentice falconer. The red-tailed and red-shouldered hawks shall be first-year (passage) age class birds, capable of flight. Any American kestrel which has left the nest and is capable of flight may be taken from the wild. There is no age restriction on exotic raptors. Apprentice falconers may buy and sell only exotic raptors.

(b) General falconry permits. General permittees shall be at least eighteen (18) years of age, have at least two (2) years experience in the practice of falconry at the apprentice level, and have complied with all reporting requirements of this administrative regulation. A permittee at the general level may possess no more than two (2) nonexotic raptors and shall not take more than two (2) replacements from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild. General permittees may take and possess any legal hunting raptor defined in this administrative regulation.

(c) Master falconry permits. Master permittees shall have at least five (5) years experience in the practice of falconry at the general class level and have complied with all requirements of this administrative regulation. A master permittee may possess no more than three (3) nonexotic raptors. No more than two (2) raptors for replacement birds shall be taken from the wild during any twelve (12) month period which begins when any replacement raptor is taken from the wild. A master permittee may take and possess any legal hunting raptor, but shall not take, in any twelve (12) month period, as part of the three (3) bird limitation, more than one (1) raptor listed as threatened in 50 C.F.R. Part 17, Subpart B, Section 17.11, and then only when approved by the U.S. Fish and Wildlife Service and the Department of Fish and Wildlife Resources. Master falconers may replace any number of captive bred raptors a year provided the possession limit at one (1) time is not exceeded. Provided a permit has been issued by the department and in accordance with the Bald Eagle Protection Act and 50 C.F.R. Part 22, Subpart B, Section 22.24, master permittees may take and possess golden eagles for falconry purposes. Master permittees shall not take any species listed as endangered by 50 C.F.R. Part 17, Subpart B, Section 17.11, but may possess such species in accordance with the Endangered Species Act and implementing regulations.

(2) Sponsors. Sponsors shall hold a master or general falconry permit. A sponsor shall not have more than three (3) apprentices at any one (1) time. A sponsor withdrawing sponsorship shall notify the department in writing giving reasons for withdrawal and shall notify the apprentice. If the apprentice does not have a new sponsor within thirty (30) days from the date of notification of withdrawal, his permit shall be deemed cancelled and his birds relocated.

(3) Application, processing and issuance. To obtain any class of joint state/federal falconry permit, an applicant shall complete the standard falconry permit application form (KYF - 1), hereby incorporated by reference, as designated by the Department of Fish and Wildlife Resources and approved by the U.S. Fish and



Wildlife Service, which is available from the Department of Fish and Wildlife Resources, and submit it to the Department of Fish and Wildlife Resources, #1 Sportsman's Lane (Game Farm Road), Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Accompanying the completed application shall be two (2) checks, one (1) payable to the Department of Fish and Wildlife Resources in the amount specified for a falconry permit in 301 KAR 3.022 [3.021] and one (1) payable to the U.S. Fish and Wildlife Service in the amount specified in 50 C.F.R. Part 13, Subpart B, Section 13.11. Also accompanying the application shall be an inventory of raptors which the applicant possesses at the time of application as specified in Section 6(1) of this administrative regulation and 50 C.F.R. Part 21, Subpart C, Section 21.28. Upon receipt of a completed application, inventory and fees, the application shall be forwarded to the appropriate state conservation officer who shall administer the required examination and inspect equipment and facilities. Should the equipment and facilities be adequate and the applicant pass the examination as specified in subsection (4) of this section, the state conservation officer shall certify such by affixing his signature on a letter of recommendation, and the Department of Fish and Wildlife Resources shall forward the application, certification, appropriate fee and test score to the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service may then issue the permit(s) according to the applicable terms and conditions of 50 C.F.R. Parts 13, 21, or 22.

(4) Examination required. Applicants for all classes of falconry permits shall take an appropriate written examination and score no less than eighty (80) percent. The test shall be approved in accordance with 50 C.F.R. Subpart C, Part 21.29(f) and shall be administered and supervised by the Department of Fish and Wildlife Resources at a designated site.

(5) Duration of permits. Permits shall be valid for a period of three (3) years from date of issuance.

(6) Fees. Falconry permit fees are as listed in 301 KAR 3.022 [021].

**Section 5. Facilities and Equipment.** Facilities and equipment shall meet the minimum standards described in 50 C.F.R. Part 21, Subpart C, Section 21.29. Facilities, equipment and raptors shall be made available at all times for inspection by authorized personnel of the Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service.

**Section 6. Marking.** All peregrine falcons (*Falco peregrinus*), gyrfalcons (*Falco rusticolus*) and Harris hawks (*Parabuteo unicinctus*) shall be banded with markers supplied by the U.S. Fish and Wildlife Service at all times according to provisions of 50 C.F.R. Part 21, Subpart C, Section 21.29.

**Section 7. License Requirements and Conditions for Taking Raptors From the Wild.** (1) License requirements. Holders of Kentucky falconry permits shall have in their possession a valid annual Kentucky hunting license before taking any raptor from the wild. Before taking a raptor from the wild, a nonresident shall have a Kentucky nonresident annual hunting license and joint state/federal permit(s) or individual state and federal falconry permit(s) from his home state and a special permit from the Department of Fish and Wildlife Resources. Application for such special permit(s) shall be made by writing the Department of Fish and Wildlife Resources, #1 Sportsman's Lane (Game Farm Road), Frankfort, Kentucky 40601, at least fifteen (15) days in advance of the date on which the permit is desired, and describing the nature of your request, your name, address, and status and number of your federal/state falconry permit.

(2) Conditions for taking raptors from the wild.

(a) Eyasses. Young birds not yet capable of flight (eyasses) may be taken only by a general or master falconer and only during the period May 12 through July 14. No more than two (2) eyasses shall be taken from the wild by the same permittee during this period. At least one (1) young shall be left in any nest from which raptors are taken.

(b) Passage birds. First year (passage) birds may be taken only during the period September 7 through December 31.

(c) Retrapping. Raptors may be retrapped only in accordance

with 50 C.F.R. Part 21, Subpart C, Section 21.29.

(d) Mature birds. Only American kestrels and great horned owls may be taken when over one (1) year old, except that any legal hunting raptor taken under a depredation or special purpose permit may be used for falconry by general and master falconers. All traps or other devices for taking raptors alive shall be tagged with the owners' name and address.

(e) All raptors taken from the wild shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28, 21.29 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

**Section 8. Raptors Acquired Before 1977.** (1) A person possessing raptors legally acquired before January 1, 1977, and who fails to meet the permit requirements, shall be allowed to retain the raptors with a nonhunting raptor permit. These raptors shall not be replaced nor used for hunting. Facilities and equipment for holding them shall meet the standards in Section 5 of this administrative regulation.

(2) A falconry permittee legally possessing raptors acquired before January 1, 1977, in excess of the number allowed under his class permit, shall be allowed to retain and hunt the extra raptors. No replacement shall occur, nor shall an additional nonexotic raptor be obtained, until the number in possession is at least one (1) less than the total number authorized by the class of permit held by the permittee.

**Section 9. Importation, Trading or Transferring, Purchasing, Bartering or Selling, Temporary Care and Feathers of Raptors.** (1) Importation. Holders of valid falconry permit(s) may transport any legally held raptor into or within the state of Kentucky without a transportation permit from the Department of Fish and Wildlife Resources as required in 301 KAR 2.081 and 2.082 [2.080].

(2) Trading or transferring. Any class falconry permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within the state of Kentucky and no money or other consideration is involved. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of all states involved is obtained and no money or other consideration is involved in the transaction, except as allowed in 50 C.F.R. Part 21, Subpart C, Section 21.28(d)(8). All such transactions shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

(3) Purchasing, bartering or selling. General and master class permittees may purchase, barter or sell any lawfully possessed raptor which is bred in captivity under authority of a raptor propagation permit issued pursuant to 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30, subject to the following conditions:

(a) Any permittee who buys from, sells to or barter with any person in the United States or a foreign country shall meet the conditions specified in 50 C.F.R. Part 21, Subpart C, Section 21.30(d)(5);

(b) Raptor propagation permittees who sell or barter raptors shall have a commercial captive wildlife (propagation) permit issued by the Department of Fish and Wildlife Resources according to provisions of 301 KAR 2.081 [080];

(c) All transactions shall be reported to the U.S. Fish and Wildlife Service as required in 50 C.F.R. Part 21, Subpart C, Sections 21.28 and 21.30 with a copy of the report being sent to the Department of Fish and Wildlife Resources in the same time frame.

(4) Temporary relocation of raptors. Raptors may be temporarily held for a permittee only by individuals who themselves are authorized to possess raptors, and subject to all other conditions in 50 C.F.R. Part 21, Subpart C, Section 21.29(j)(4).

(5) Feathers. Molted feathers or feathers from birds that die in captivity, may be retained and exchanged by permittees only for limping purposes.

**Section 10. Release of Raptors.** No person shall intentionally release to the wild any species not native to Kentucky without first obtaining written permission from the commissioner. The marker

from the released bird shall be removed and surrendered to the department. The marker from an intentionally released indigenous bird shall also be removed and surrendered to the department. A federal bird band shall be affixed to a captive-bred raptor intentionally released to the wild.

**Section 11 Raptor Propagation Requirements, Authorized Activities, Applications, Records, and Reports.** (1) Raptor propagation requirements. No person shall breed or propagate raptors without obtaining the appropriate Kentucky captive wildlife [pet and propagation] permit as required in 401 KAR 51:080. A commercial captive wildlife [pet and propagation] permit authorizes the propagation and sale of raptors. A noncommercial permit authorizes only propagation. Permittees shall comply with all requirements, including permit application, of 50 C.F.R. Part 21, Subpart C, Section 21.30.

(2) Authorized activities. All activities permitted by 50 C.F.R. Part 21, Subpart C, Section 21.30 are authorized in Kentucky except as otherwise noted in this administrative regulation.

(3) Applications, records, and reports. Copies of all raptor propagation applications, records, and reports required by the U.S. Fish and Wildlife Service in 50 C.F.R. Part 21, Subpart C, Section 21.30, shall be submitted to the Department of Fish and Wildlife Resources on the same dates as required by 50 C.F.R. Part 21, Subpart C, Section 21.30.]

MARK S. CRAMER, Deputy Commissioner

For DR. JONATHAN W. GASSETT, Commissioner

GEORGE WARD, Secretary

APPROVED BY AGENCY: April 11, 2007

FILED WITH LRC: April 11, 2007 at 3 p.m.

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.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department for Environmental Protection**  
**Division for Air Quality**  
**(As Amended at IJC, on Agriculture and**  
**Natural Resources Committee, June 13, 2007)**

**401 KAR 51:220. CAIR NOx ozone season trading program.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11-75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7410

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 requirements for the control of nitrogen oxides (NOx) emissions from large boilers and turbines used in power plants and other industrial applications, pursuant to the federal mandate published under the Clean Air Interstate Rule (CAIR), 40 C.F.R. 96.301 to 96.388. This administrative regulation is not more stringent than the provisions allowed under the federal mandate.

**Section 1. Applicability.** This administrative regulation shall apply to:

(1) CAIR NOx Ozone Season units in Kentucky [that are] subject to 40 C.F.R. 96.304, [or]

(2) A [Any] new or existing industrial boiler or turbine [as defined in 401 KAR 51:001] [An industrial boiler or turbine as defined in 401 KAR 51:001 that was previously allocated NOx allowances pursuant to 401 KAR 51:160]; or

(3) A new or existing electric generating unit including a fossil fuel-fired boiler, combustion turbine, or combined cycle

system;

(a) Serving a generator with a nameplate capacity greater than twenty-five (25) megawatts of electricity; and

(b) Offering some electricity for sale. [A] [Any] [new or existing electric generating unit], as defined in 401 KAR 51:001, as a fossil fuel-fired boiler, combustion turbine, or a combined cycle system that serves a generator with a nameplate capacity greater than twenty-five (25) MWe, producing electricity, some of which is for sale] [A unit that qualifies as a cogeneration unit pursuant to 40 C.F.R. 96.304(b)(1)(i) and that was previously allocated NOx allowances pursuant to 401 KAR 51:160].

**Section 2. Compliance Requirements.** CAIR NOx Ozone Season units shall comply with the following requirements:

(1) 40 C.F.R. 96.301 to 96.308 (Subpart AAAA), "CAIR NOx Ozone Season Trading Program General Provisions";

(2) 40 C.F.R. 96.310 to 96.315 (Subpart BBBB), "CAIR Designated Representative for CAIR NOx Ozone Season Sources";

(3) 40 C.F.R. 96.320 to 96.324 (Subpart CCCC), "Permits";

(4) 40 C.F.R. 96.350 to 96.357 (Subpart FFFF), "CAIR NOx Ozone Season Allowance Tracking System";

(5) 40 C.F.R. 96.360 to 96.362 (Subpart GGGG), "CAIR NOx Ozone Season Allowance Transfers";

(6) 40 C.F.R. 96.370 to 96.375 (Subpart HHHH), "Monitoring and Reporting"; and

(7) 40 C.F.R. 96.380 to 96.388 (Subpart IIII), "CAIR NOx Ozone Season Opt-in Units".

**Section 3. Methodology for the Allocation of CAIR NOx Ozone Season Allowances.** The number of CAIR NOx Ozone Season allowances to be allocated to each CAIR NOx Ozone Season unit by the cabinet and to be sold by the Commonwealth of Kentucky shall be determined pursuant to this section.

(1) The total number of CAIR NOx Ozone Season allowances shall be as follows:

(a) For the 2009 through 2014 control periods, 36,109 tons, which includes 36,045 tons as specified in 40 C.F.R. 96.340, and sixty-four (64) allowances previously allocated under 401 KAR 51:160 for units specified in Section 1(2) of this administrative regulation; and

(b) For the 2015 control periods and thereafter, 30,651 tons, which includes 30,587 tons as specified in 40 C.F.R. 96.340[,] and sixty-four (64) allowances previously allocated under 401 KAR 51:160 for units specified in Section 1(2) of this administrative regulation.

(2) The total number of CAIR NOx Ozone Season allowances assigned to Kentucky shall be divided into separate pools as follows:

(a) Ninety-eight (98) percent of the total number of allowances shall be allocated for each control period to units that commence operation or commence commercial operation before:

1. January 1, 2006, for the control periods 2009, 2010, 2011, 2012, 2013, and 2014;

2. January 1, 2009, for the 2015 control period; and

3. Thereafter, before January 1 of the year that is six (6) years before the next control period; and

(b) Two (2) percent of the total number of allowances for each control period shall be sold by the Commonwealth of Kentucky in accordance with Section 4 of this administrative regulation.

(3) For each CAIR NOx Ozone Season unit, the baseline heat input or adjusted control period heat input in mmBtu shall be determined and shall be used to determine CAIR NOx Ozone Season allowances for the pool specified in subsection (2) of this section as follows:

(a) For CAIR NOx Ozone Season units commencing operation or commencing commercial operation before January 1, 2001, and:

1. Operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for 2001 through 2005; or

2. For units not having operated each calendar year for a period of five (5) or more consecutive years, the baseline heat input shall be established during the next allocation period after [when] the unit has five (5) consecutive years of operation, using the aver-



age of the three (3) highest amounts of the unit's adjusted control period heat input for the most recent five (5) consecutive years of operation; (e)

(b) For CAIR NOx Ozone Season units commencing operation or commencing commercial operation on or after January 1, 2001, and operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input over the most recent consecutive five (5) years of operation; or

(c) For CAIR NOx Ozone Season units that have not operated each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall not be established. For purposes of allocations, the heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for the previous five (5) years of operation, the:

1. Adjusted control period heat input for a control period of not operating shall equal zero; and

2. Average of the three (3) highest amounts of the unit's adjusted control period heat input for the previous five (5) years of operation, where the:

1-Unit shall not establish a baseline heat input;

2-Adjusted control period heat input for a control period of not operating shall equal zero;

3-Cabinet shall allocate CAIR NOx Ozone Season allowances for the unit.

(4) The adjusted control period heat input for each ozone season shall be calculated [as follows] for CAIR NOx Ozone Season units specified in subsection (2)(a) of this section as follows:

(a) If the unit is coal-fired during the year, the unit's control period heat input for that year shall be multiplied by 100 percent;

(b) If the unit is oil-fired during the year, the unit's control period heat input for that year shall be multiplied by sixty (60) percent; and

(c) If the unit is not subject to paragraphs (a) or (b) of this subsection, the unit's control period heat input for that year shall be multiplied by forty (40) percent [; and]

(5) The adjusted control period heat input for CAIR NOx Ozone Season units specified in subsection (2)(b) of this section shall equal the unit's control period heat input multiplied by 100 percent.

(6) For an ozone season, the unit's control period heat input and the unit's status as coal-fired or oil-fired shall be determined:

(a) In accordance with 40 C.F.R. Part 75, if the unit is subject to 40 C.F.R. Part 75;

(b) By the best available data reported to the cabinet for the unit if the unit is not otherwise subject to 40 C.F.R. Part 75; or

(c) By the best available data obtained by the cabinet.

(7) For CAIR NOx Ozone Season units included in the pool specified in subsection (2)(a) of this section, the cabinet shall allocate CAIR NOx Ozone Season allowances to each CAIR NOx Ozone Season unit in an amount equal to the result obtained by:

(a) Multiplying the total amount of CAIR NOx Ozone Season allowances specified in subsection (2)(a) of this section by the baseline heat input for each unit or the heat input established under subsection (3)(c) of this section;

(b) Dividing by the total amount of baseline heat input and the heat input established under subsection (3)(c) of this section for all applicable CAIR NOx Ozone Season units; and

(c) Rounding to the nearest whole CAIR NOx Ozone Season allowance, as appropriate.

(8) The cabinet shall submit to the U.S. EPA the CAIR NOx Ozone Season allowances to be allocated and sold from the pools specified in subsection (2) of this section in a format prescribed by the U.S. EPA by:

(a) October 31, 2006, for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014; [and]

(b) October 31, 2009, for the control period 2015, and

(c) October 31 of each year thereafter, for the control period in the sixth year after the year of the applicable deadline for submission.

Section 4. Sale of CAIR NOx Allowances by the Commonwealth of Kentucky.

(1) The Commonwealth of Kentucky shall establish an account pursuant to 40 C.F.R. 96.351(b) for the purpose of selling the CAIR

NOx Ozone Season allowances in the pool specified in Section 3(2)(b) of this administrative regulation.

(2) The proceeds from the sale of the CAIR NOx Ozone Season allowances shall be deposited in the general fund of the Commonwealth of Kentucky.

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: February 15, 2007

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

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, email gerry.ennis@ky.gov.

## JUSTICE AND PUBLIC SAFETY CABINET

Department of State Police

(As Amended at ARRS, June 7, 2007)

502 KAR 32:010. Centralized database for DNA identification records.

RELATES TO: KRS 17.170, 17.171, 17.172, 17.173, 17.174, 17.175

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.170, 17.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.175 requires the Kentucky State Police to promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system, including procedures for collection of DNA samples from designated persons for inclusion in the database, and procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples included in the DNA database, and procedures governing DNA database system usage, security, and integrity.

Section 1. Definitions. (1) "Biological sample" means any part of the human body from which a person's DNA profile may be extracted such as blood, hair, saliva, tissue, or bone.

(2) "Blood sample" means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile.

(3) "DJJ" means the Department of Juvenile Justice.

(4) "DNA" means deoxyribonucleic acid.

(5) "DNA database" means the database maintained by the Kentucky State Police which contains the DNA profiles for qualifying offenders, crime scene specimens, missing persons, and close relatives of missing persons as authorized by KRS 17.175.

(6) "DNA profile" means a set of DNA identification characteristics which permit the DNA of one (1) person to be distinguishable from that of another person.

(7) "DNA sample" means a biological sample collected for DNA identification purposes.

(8) "DOC" means the Department of Corrections.

(9) "Evidentiary item" means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted.

(10) "FBI" means the Federal Bureau of Investigation.

(11) "KSP" means the Kentucky State Police.

(12) "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory.

(13) "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a blood sample from a qualifying offender by either hypodermic needle extraction or finger prick lancet for the purpose of obtaining a DNA profile.

(14) "Qualifying offender" means a person who has committed one (1) or more of the criminal or public offenses enumerated in KRS 17.170 - 17.174.

Section 2. Collection of DNA Samples From Qualifying Offend-

ers For Inclusion In DNA Database. (1) In accordance with KRS 17.170(2), DNA samples shall be collected by DOC and DJJ from qualifying offenders in a medically-approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist.

(2) In accordance with KRS 17.170(2), KSP Central Lab shall provide offender DNA collection kits to DOC and DJJ for the collection of DNA samples. Each offender DNA collection kit shall either contain a vacutainer tube containing EDTA preservative for obtaining a drawn blood sample by hypodermic needle extraction, or the collection materials necessary to obtain a blood sample by a finger stick lancet procedure. Each offender DNA collection kit shall be secured in protective wrapping materials in a preaddressed, sealable mailing container.

(3) Each offender DNA collection kit for the collection of a blood tube sample shall contain an "Offender DNA Collection Kit Information Sheet (blood tube method)", KSP Form No. 47 [(Revised 5/03)]. Each offender DNA collection kit for the collection of a finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)", KSP Form No. 47-A [(First Edition 01/06)]. The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample on one (1) side of the form. The other side of the Offender DNA Collection Kit Information Sheet shall be completed with biographical and offense-related information concerning the offender, and shall have space for the qualifying offender's left and right thumbprints. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the blood sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender.

(4) Immediately following collection of a blood sample from a qualifying offender, the offender DNA collection kit shall be sealed. As soon as practical following collection, the offender DNA collection kit shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail.

Section 3. Collection of Missing Person DNA Samples for Inclusion in DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted which is submitted by a law enforcement agency to the KSP Central Lab shall be accompanied by a completed KSP "Request For Examination," KSP Form No. 26 [(Revised 3/04)].

(2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a blood sample from children of the missing person and the children's other parent may also be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 4. Collection of DNA Samples from Unidentified Bodies for Inclusion in DNA Database. (1) A biological sample from the unidentified body, submitted by a law enforcement agency to the laboratory, shall be accompanied by a completed KSP Form No. 26.

(2) If practical, the biological sample shall be a blood sample, a deep muscle tissue sample, or a long bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable if one (1) of the above-enumerated samples cannot be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 5. Collection Of DNA Samples From Crime Scenes For Inclusion In DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26.

(2) Biological samples shall be placed in protective packaging.

All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 6. Quality Assurance Standards for DNA Database. (1) The proficiency of examiners conducting DNA analysis for the database shall be tested twice a year in accordance with 42 U.S.C. 14132(b)(1).

(2) Only DNA profiles obtained as a result of analysis conducted in conformance with the quality assurance standards set forth in the KSP Forensic Laboratories' "The Forensic Biology/DNA Database Quality Assurance Manual[.]" [(Revised January 19, 2007)] [13, 2006], KSP Forensic Laboratories' Operations Manual, Section 9-9 "Proficiency Testing Program," (Revised July 1, 2003), and KSP Forensic Laboratories' Operations Manual, Section 9-12 "Proficiency testing - Confidentiality," (Revised July 1, 2003)] shall be entered in the DNA database.

Section 7. DNA Database Usage, Access and Security. (1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.175.

(2) DNA database security, employee access, and limitations on DNA database usage shall be governed by the KSP Forensic Laboratories' "DNA Database Manual" [(Revised January 8, 2007)] [9, 2006].

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

(a) "Offender DNA Sample [Collection Kit] Information Sheet (blood tube method)," KSP Form No. 47, May 2003 [(Revised 5/03)];

(b) "Offender DNA Collection Kit Information Sheet (finger prick lancet method)" KSP Form No. 47-A, January 2006 [(First Edition 4/06)];

(c) "KSP Request For Evidence Examination," KSP Form No. 26, March 2001 [(Revised 3/04)];

(d) KSP Forensic Laboratories' "The Forensic Biology/DNA Database Quality Assurance Manual," [Revised] January 19, 2007 [13, 2006];

(e) [KSP Forensic Laboratories' Operations Manual, Section 9-9 "Proficiency Testing Program," Revised July 1, 2003];

(f) KSP Forensic Laboratories' Operations Manual, Section 9-12 "Proficiency testing - Confidentiality," Revised July 1, 2003, and

(g) KSP Forensic Laboratories' "DNA Database Manual," [Revised] January 8, 2007 [9, 2006].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KSP Central Forensic Laboratory, 100 Sower Boulevard, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN (JACK) ADAMS, Commissioner

APPROVED BY AGENCY: March 30, 2007

FILED WITH LRC: April 12, 2007 at 2 p.m.

CONTACT PERSON: 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.

# ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Department of Labor

Office of Occupational Safety and Health  
(As Amended at ARRS, June 7, 2007)

803 KAR 2:300. General.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.3-1910.7

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations [necessary to accomplish the

purposes of KRS Chapter 338]. 29 C.F.R. 1910.3-1910.7 establishes occupational safety and health standards found to be national consensus standards or established federal standards to be enforced by the Office of Occupational Safety and Health in [This administrative regulation establishes the general standards to be enforced by the Office of Occupational Safety and Health, Division of Compliance in the area of] general industry. This administrative regulation establishes the general standards to be enforced by the Office of Occupational Safety and Health in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means [the] Commissioner of Labor, Kentucky [the] Department of Labor, or Executive Director, Office of Occupational Safety and Health, [Commonwealth of] Kentucky Department of Labor.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined in KRS 338.015(2).

(5) "Employer" is defined in KRS 338.015(1).

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined in KRS 338.015(9).

(8) "Secretary of Labor" means Commissioner of Labor, Kentucky Department of Labor or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor.

(9) "Standard" is defined in KRS 338.015(3).

(10) [(4)] "U.S. Department of Labor" means [the] U.S. Department of Labor or [the] Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. General industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 of this administrative regulation and requirements in Section 3 of this administrative regulation.

(1) [(a)] 29 C.F.R. 1910.3-1910.7, revised July 1, 2006; and

(2) [(b)] The amendment to 29 C.F.R. 1910.6 published in the February 14, 2007, Federal Register, Volume 72, Number 30 (72 Fed. Reg. 7190).

Section 3. Purpose and Scope. The general industry standards established in 29 C.F.R. Part 1910 and referenced in [incorporated by] KAR Title 803 shall apply to all employers, employees, and places of employment throughout the Commonwealth of Kentucky except if [where] excluded by KRS 338.021, [established federal standards contained in 29 C.F.R. Part 1910 shall be adopted and extended to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021].

Section 3. General industry shall comply with the requirements of 29 C.F.R. 1910.3 through 1910.7, revised as of July 1, 2006, as amended by the definitions established in Section 1 of this regulation.]

PHILIP J. ANDERSON, Chairman

APPROVED BY AGENCY: March 30, 2007

FILED WITH LRC: April 12, 2007 at 3 p.m.

CONTACT PERSON: Chuck Stnbling, CSP, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Labor

Office of Occupational Safety and Health

(As Amended at ARRS, June 7, 2007)

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.66-

1910.68

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[—29 C.F.R. 1910]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to [adept and] promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.66-1910.68 establishes occupational safety and health standards relating to powered platforms, manlifts, and vehicle-mounted work platforms to be enforced by the Office of Occupational Safety and Health in [Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of] general industry. This administrative regulation establishes those standards to be enforced by the Office of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Commissioner of Labor, Kentucky Department of Labor or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1). ["Act" means KRS Chapter 338-

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(6) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. General industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions established in Section 1 of this administrative regulation:

(1) [(a)] 29 C.F.R. 1910.66-1910.68 and Appendices, revised July 1, 2006; and

(2) [(b)] The amendment to 29 C.F.R. 1910.66 published in the February 14, 2007, Federal Register, Volume 72, Number 30 (72 Fed. Reg. 7190). [Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.66-70 of the Code of Federal Regulations revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is hereby incorporated by reference;

(b) The removal of paragraph (k) of 29 C.F.R. 1910.66, "Powered Platforms for Building Maintenance", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference;

(c) The revisions to 29 C.F.R. 1910.67, "Vehicle-Mounted Elevating and Rotating Platforms", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference;

(d) The revisions to 29 C.F.R. 1910.68 "Manlifts", as published in the Federal Register, Volume 61, Number 46, March 7, 1996,

are incorporated by reference;

(e) The removal of 29 C.F.R. 1910.60, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference;

(f) The removal of 29 C.F.R. 1910.70, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]

PHILIP J. ANDERSON, Chairman

APPROVED BY AGENCY: March 30, 2007

FILED WITH LRC: April 12, 2007 at 3 p.m.

CONTACT PERSON: Chuck Stribling, CSP, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

# ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Labor

Office of Occupational Safety and Health

(As Amended at ARRS, June 7, 2007)

803 KAR 2:318. Electrical [Adoption of 29 C.F.R. Part 1910.301-399].

RELATES TO: KRS 338.051, 338.061, [Chapter 338,] 29 C.F.R. 1910.301-1910.399

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health [rules,] administrative regulations, [and standards]. 29 C.F.R. 1910.301-1910.399 establishes the federal requirements relating to electrical safety. This [Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following] administrative regulation establishes electrical safety [contains these] standards to be enforced by the Office [Division] of Occupational Safety and Health [Compliance] in [the area of] general industry. [The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1910.]

Section 1. Definitions. (1) "Assistant Secretary" means Commissioner of Labor, Kentucky Department of Labor or Executive Director, Office of Occupational Safety and Health, Kentucky Department of Labor.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined in KRS 338.015(1).

Section 2. (1) General industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions established in Section 1 of this administrative regulation:

(a) 29 C.F.R. 1910.301 through 29 C.F.R. 1910.399, and Appendices, revised July 1, 2006, and

(b) The revision to Subpart S published in the February 14, 2007, Federal Register, Volume 72, Number 30 (72 Fed. Reg. 7190).

(2) The term "may not" as used in the federal regulations shall be considered a prohibition. [The Occupational Safety and Health Standards Board hereby adopts 29 C.F.R. Part 1910.301-399 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1)(a) The additions to 29 C.F.R. 1910.331, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are

incorporated by reference.

(b) The revisions to 29 C.F.R. 1910.331, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(c) The addition to 29 C.F.R. 1910.331, "Scoops", as published in the Federal Register, Volume 59, Number 20, January 31, 1994, is incorporated by reference.

(2)(a) The additions to 29 C.F.R. 1910.332, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) 1910.332(b)(2)(iii)(C) is amended to read as follows: "If a lock cannot be applied, tagging procedures shall provide a level of safety equivalent to that obtained by the use of a lock, as outlined in paragraph (b)(2)(iii)(D)."

(3)(a) The additions to 29 C.F.R. 1910.333, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) The revisions to 29 C.F.R. 1910.333, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(c) The addition to 29 C.F.R. 1910.333, "Selection and Use of Work Practices", as published in the Federal Register, Volume 59, Number 20, January 31, 1994, is incorporated by reference.

(4) The revisions to 29 C.F.R. 1910.334, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

(5) The additions to 29 C.F.R. 1910.335, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(6) The additions to 29 C.F.R. 1910.384, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(7)(a) The additions to 29 C.F.R. 1910.390, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, are incorporated by reference.

(b) The revisions to 29 C.F.R. 1910.390, as published in the Federal Register, Volume 55, Number 212, November 1, 1990, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

PHILIP J. ANDERSON, Chairman

APPROVED BY AGENCY: March 30, 2007

FILED WITH LRC: April 12, 2007 at 3 p.m.

CONTACT PERSON: Chuck Stribling, CSP, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

# ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department for Natural Resources

Office of Mine Safety and Licensing

(As Amended at ARRS, June 7, 2007)

805 KAR 7:010. Definitions for 805 KAR Chapter 7.

RELATES TO: KRS 351.102, 351.103, 351.105

STATUTORY AUTHORITY: KRS 351.070(13), 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102, 351.103, and 351.106 require a person to be trained before his certification for employment in coal mines. KRS 351.070(3) requires the Office of Mine Safety and Licensing [Department of Mines and Minerals] to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 351. This administrative regulation establishes the definitions for 805 KAR Chapter 7.

Section 1. Definitions. (1) "Belt conveyor" means a belt lo-

cated underground outby the loading point which moves on rollers used to carry coal and any structures, motors, or accessories used to support, protect, or increase its efficiency.

(2) "Certified Belt Examiner" means a person [someone] certified by the Office of Mine Safety and Licensing who is trained to follow examination and reporting procedures in examining the belt conveyor and surrounding conditions.

(3)(4) "Certified person" means a person certified by the commissioner to perform particular work duties in and around a coal mine.

(4)(2) "Experienced surface miner" means a person who has worked a minimum of forty-five (45) working days at a surface mine or on the surface area of an underground mine and has complied with all statutory and regulatory training requirements.

(5)(3) "Experienced underground miner" means a person who has worked a minimum of forty-five (45) working days in an underground coal mine and has complied with all statutory and regulatory training requirements.

(6)(4) "Hazard training" means instruction in awareness and avoidance of accident or injury from conditions inherent to mining provided by the licensee to visitors exposed to mine hazards.

(7)(5) "Inexperienced surface miner" means a trainee miner who has not worked a minimum of forty-five (45) working days at a surface mine or on the surface area of an underground coal mine.

(8)(6) "Inexperienced underground miner" means a trainee miner who has not worked a minimum of forty-five (45) working days in an underground coal mine.

(9)(7) "Mine-specific training" means the instruction of mining relative to the distinct factors of a particular mine.

(10)(8) "Newly employed miner" means a miner, experienced or inexperienced, employed by a licensee to work at a coal mine, who has not completed mine specific training requirements.

(11)(9) "New work assignment" means a work duty in which a miner has not completed task training or demonstrated proficiency.

(12)(40) "Normal work shift" means the period of time during which the miner is scheduled to work on a regular basis.

(13)(44) "Surface coal miner" means a person at a surface mine or on the surface area of an underground mine who is engaged in an activity of mining or processing coal.

(14)(12) "Task training" means training of miners for new work assignments.

(15)(43) "Trainee miner" means a miner who has not worked a minimum of forty-five (45) working days at a coal mine.

(16)(44) "Underground coal miner" means:

(a) A person working in an underground mine who is engaged in the extraction and production process including maintenance or service; or

(b) A person employed or contracted by the licensee who is regularly exposed to mining hazards.

LLOYD R. CRESS, Deputy Secretary

For THERESA J. HILL, Secretary

APPROVED BY AGENCY: April 10, 2007

FILED WITH LRC: April 11, 2007 at 9 a.m.

CONTACT PERSON: Holly McCoy, Executive Staff Advisor, Office of Technical and Administrative Support, Department for Natural Resources, P.O. Box 2244, Frankfort, Kentucky 40602-2244, phone (502) 573-0140, fax (502) 573-0152.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Holly McCoy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions required for proposed 805 KAR 7:100 establishing the criteria for a belt examiner certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective training program in accordance with KRS 352.340, 352.350 and 351.106.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the establishment of a belt examiner certification, and sets forth the examination criteria and the standards for a program of training and education for those wishing to become certified as a belt examiner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for a belt examiner certification in accordance with KRS 352.340.

(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 proposed amendment provides definitions necessary for a section of a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation. The amended regulation, 805 KAR Chapter 7 establishes training requirements for mining certifications.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment creates necessary definitions for a new section of regulation that establishes criteria for a belt examiner certification.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment creates necessary definitions for a new section of regulation that establishes criteria for a belt examiner certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regulated entities including coal mines and individuals seeking a belt examiner certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action required if regulated entities wish to continue to utilize a certified mine foreman to perform conveyor belt examinations. Those wishing to obtain belt examiner certification must meet experience requirements and successfully complete an examination.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The minimal fees charged for belt examiner training will mirror the costs in administering the program. Training personnel will be provided by the agency without an increase in resources.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individual miners will attain new skills and become more valuable to the mine operation. Mine foremen, currently tasked with belt examination, will be able to concentrate their duties on other aspects of the operation.

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

(a) Initially: No significant change in workload is expected to result from this amendment, and therefore no significant cost is expected.

(b) On a continuing basis: No significant cost is expected.

(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 General Fund as budgeted to the Office of Mine Safety and Licensing.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the safety concerns addressed by this administrative 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? The Office of Mine Safety and Licensing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is necessary to implement an effective training program in accordance with KRS 352.340, KRS 352.350 and KRS 351.106. Authorizing statutes call for the establishment of a belt examiner certification and set forth examination criteria.

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? Not applicable; proposed regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable; proposed regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? Not applicable; proposed regulation will not incur costs.

(d) How much will it cost to administer this program for subsequent years? Not applicable; proposed regulation will not incur costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department for Natural Resources  
Office of Mine Safety and Licensing  
(As Amended at ARRS, June 7, 2007)

### 805 KAR 7:100. Requirements for Belt Examiner.

RELATES TO: KRS 352.340, 351.106

STATUTORY AUTHORITY: KRS 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.340 provides for examinations of belts to be conducted by a certified belt examiner or a certified mine foreman. KRS 351.106 requires the Commissioner of the Department for Natural Resources to promulgate administrative regulations necessary to establish a program to implement the conduct of examinations to test each applicant's knowledge and understanding of the instruction.

Section 1. Belt Examiner Certification Requirements. (1) Each applicant for certification as a belt examiner shall:

- (a) Hold a Kentucky underground miner's certification;
- (b) Have a total of three (3) years practical underground mining experience;
- (c) Successfully complete a written and practical skills examination prescribed by the office; and
- (d) Understand and be able to read, speak and write the English language.

Section 2. Training Course Requirements. (1) The training course for certification as a belt examiner shall include instruction in the following topics:

- (a) Roof control practices;
- (b) Mine ventilation;
- (c) Mine gases and instruments;
- (d) Fire hazards, including fire fighting and evacuation plans;
- (e) Inspection and reporting procedures; and

(f) Use of an anemometer, methane detector, and oxygen detecting devices.

(2) The training course shall also be:

- (a) Not less than ~~six (6)~~ [eight-(8)] hours in duration;
- (b) Taught by a Kentucky certified instructor; and
- (c) Limited to thirty (30) students per instructor.

Section 3. Belt Examiner Certification Examination. (1) At the time of taking the belt examiner certification examination, the applicant shall provide proof of drug and alcohol-free status as set forth in KRS Chapter 351.

(2) The belt examiner certification examination shall be prescribed and administered by the office and shall consist of the following two (2) parts.

(a) Written, an overall grade of eighty (80) percent shall be required to pass; and

(b) Practical, demonstrating proficiency with an anemometer, methane detector, and oxygen detecting devices.

(3) If the applicant fails either to pass the written test or to demonstrate proficiency during the practical portion of the test, he shall be permitted one (1) opportunity to retake the portion or portions failed. The reexamination shall be conducted within thirty (30) days of the initial exam date.

(4) If the applicant for certification fails to pass the written or practical portion after reexamination, he shall complete the belt examiner training course before being eligible for subsequent examination.

LLOYD R. CRESS, Deputy Secretary

For Teresa J. Hill, Secretary

Approved by agency: April 10, 2007

Filed with LRC: April 11, 2007 at 9 a.m.

CONTACT PERSON: Holly McCoy, Executive Staff Advisor, Office of Technical and Administrative Support, Department for Natural Resources, P.O. Box 2244, Frankfort, Kentucky 40602-2244, phone (502) 573-0140, fax (502) 573-0152.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Holly McCoy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the belt examiner certification, the training course curriculum and the belt examiner certification examination components.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective training program in accordance with KRS 352.340, KRS 352.350 and KRS 351.106.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the establishment of a belt examiner certification, and set forth the examination criteria and the standards for a program of training and education for those wishing to become certified as a belt examiner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for a belt examiner certification in accordance with KRS 352.340.

(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 proposed regulation is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The proposed regulation is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed regulation is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The proposed regulation is a new administrative regulation.

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



zations, or state and local governments affected by this administrative regulation: Regulated entities including coal mines and individuals seeking a belt examiner certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action required if regulated entities wish to continue to utilize a certified mine foreman to perform conveyor belt examinations. Those wishing to obtain belt examiner certification must meet experience requirements and successfully complete an examination.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The minimal fees charged for belt examiner training will mirror the costs in administering the program. Training personnel will be provided by the agency without an increase in resources.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individual miners will attain new skills and become more valuable to the mine operation. Mine foremen, currently tasked with belt examination, will be able to concentrate their duties on other aspects of the operation.

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

(a) Initially: No significant change in workload is expected to result from this proposal, and therefore no significant cost is expected.

(b) On a continuing basis: No significant cost is expected.

(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 General Fund as budgeted to the Office of Mine Safety and Licensing.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the safety concerns addressed by this administrative 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? The Office of Mine Safety and Licensing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is necessary to implement an effective training program in accordance with KRS 352.340, KRS 352.350 and KRS 351.106. Authorizing statutes call for the establishment of a belt examiner certification and set forth examination criteria.

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? Not applicable; proposed regulation will not generate any revenue.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable; proposed regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? Not applicable; proposed regulation will not incur costs.

(d) How much will it cost to administer this program for subsequent years? Not applicable; proposed regulation will not incur costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection

Office of Housing, Buildings and Construction

Division of Building Code Enforcement

(As Amended at ARRS, June 7, 2007)

#### 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- and two-~~(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.

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

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

(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.

(8)(10) "Office" is defined by KRS 198B.010(11).

(9) [means the Office of Housing, Buildings and Construction.

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

(10)(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 is not [and sanitation, and which shall not be] connected to any other unit or building.

(11)(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.

(12)(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 Dwell-

ings. (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, [2009] as amended by this administrative regulation and the 2007 [2009] 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 established [set forth] in 815 KAR 7:120.

(3) The International Residential Code shall be amended as established [set forth] in the 2007 [2009] 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/[2009]", [First Edition,] International Code Council, Inc.; and [and]

(b) "2007 [2009] Kentucky Residential Code", May 15, 2007; and

(c) FEMA-232, June 2006].

(2) [Supplement], January 15, 2003, as amended March 2006.

(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.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**  
**Department of Public Protection**  
**Office of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(As Amended at ARRS, June 7, 2007)**

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

**RELATES TO: KRS 318.010, 318.015, 318.130, 318.150**  
**[Chapter 318]**

**STATUTORY AUTHORITY: KRS 318.130**

**NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after review by the State Plumbing Code committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. [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 establishes the methods of [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:

~~(1) Cutting[(a) Cut]~~ the pipe square;

~~(2) Removing[(b) Remove]~~ burrs;

~~(3) Cleaning[(c) Clean]~~ both pipe end and fitting socket with a recommended CPVC cleaner, unless using an approved one (1) step cement,

~~(4) Applying[(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;

~~(5) Assembling[(e) Assemble]~~ immediately by bottoming the pipe in the socket and rotating one-quarter (1/4) turn as the joint is assembled, ~~[and]~~

~~(6) Removing[(f) Remove]~~ excess cement from the joint; and ~~[(g)]~~

~~(7) Determining if the [(2) To determine if a]~~ joint has been properly assembled by looking for; a small bead of cement to ~~[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 adapters shall not be used to transition from CPVC to metal. Union type fittings that [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 that meet ~~[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. If ~~[When]~~ installing long runs of pipe, ~~[allow]~~ one-sixteenth (1/16) to three thirty-seconds (3/32) inch longitudinal clearance shall be allowed per foot of run to accommodate thermal expansion. ~~Offsets [Proper design includes offsets]~~ of twelve (12) inches or more every ten (10) feet shall be included 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.

**Cabinet for Health and Family Services  
 Department for Public Health  
 Division of Laboratory Services  
 (As Amended at ARRS, June 7, 2007)**

**902 KAR 2:080. Sexually transmitted diseases.**

RELATES TO: KRS 211.180, 214.010, 214.160, 214.170,  
 214.185, 214.420, 42 U.S.C. 263a

STATUTORY AUTHORITY: KRS 194A.050 [194.050], 211.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180  
requires [mandates] the Cabinet for Health and Family Services  
 [Human Resources] to implement [(and conduct)] a statewide pro-  
 gram for the detection, prevention and control of communicable  
 diseases and to adopt regulations specifying the information  
required in and a minimum time period for reporting a sexually  
transmitted disease. This [The purpose of this] administrative  
 regulation establishes [is to establish] uniform procedures for the  
 diagnosis, treatment, prevention and control of sexually transmitted  
 diseases (STD). [KRS 214.420] [et seq.] [provide for the confiden-  
 tiality of all information, records or reports pertaining to sexually  
 transmitted diseases.]

Section 1. Definitions. [As used in this administrative regula-  
 tion.]

(1) "Certified or Accredited [Approved serology] laboratory"  
 means a laboratory that has been:

(a) Issued a laboratory license from the state of Kentucky;  
 or  
 (b) Evaluated and certified or accredited by one (1) of the  
following regulatory agencies:

1. The Joint Commission;
2. The College of American Pathologists (CAP);
3. The Centers for Medicare and Medicaid Services (CMS);

or  
 4. The Commission on Office Laboratory Accreditation  
(COLA). [evaluated and certified or accredited by one (1) of the  
following regulatory agencies: Joint Commission Accreditation of  
Health Care Organizations (JCAHO), College of American Pa-  
thologists (CAP), Centers for Medicare and Medicaid Services  
(CMS), Commission on Office Laboratory Accreditation (COLA),  
Clinical Laboratory Improvement Amendments (CLIA) or has been  
issued a laboratory license from the state of Kentucky. The Labora-  
tory must hold certification or accreditation] [(the Cabinet for Human  
Resources)] [for performing] [serological] [tests for syphilis, in com-  
pliance with] [Kentucky's prenatal laws (][KRS 214.160][et seq.)].

(2) "Certified or approved serology test" means the Venereal  
Disease Research Laboratory Slide Test (VDRL) or rapid  
plasma reagin (RPR) [VDRL slide test or RPR] 18 mm circle card  
test or other Food and Drug Administration (FDA) approved test  
performed in accordance with [to] the directions of the manufac-  
turer.

(3) "Midlevel health care practitioner[professionals]" means a  
 [these] health care professional [professionals] who meets the  
requirements of KRS 216.925(1):

(a) Are licensed or certified by a body granted such authority  
by KRS 216.925 and pass the qualifying examination; or

(b) Work under the supervision of a family physician in a net-  
work for a minimum of five (5) years and pass the qualifying ex-  
amination in accordance with KRS 216.925.]

(4) "Reasonably suspected of being infected with a sexually  
 transmitted disease" means any person named [as a sexual con-  
 tact] in a controlled interview with a second person infected with an  
 STD, as a sexual contact of that second person within the incu-  
 bation period for the STD, or who has [having] a laboratory test

result consistent with an STD infection.

(5)(2) "Sexually transmitted diseases" or "[STD]" means  
 syphilis, gonorrhea, chancroid, granuloma inguinale, genital her-  
 pes, [acquired immunodeficiency syndrome (AIDS)], human immu-  
 nodeficiency virus (HIV) infection, nongonococcal urethritis, mu-  
 copurulent cervicitis, [and] chlamydia trachomatis infections includ-  
 ing lymphogranuloma venereum, and human papillomavirus  
 [HPV].

(6) [(3)] "Sexually transmitted diseases [(STD)] for which a  
 treatment exists to render them noninfectious" means syphilis,  
 gonorrhea, chancroid, granuloma inguinale, nongonococcal urethri-  
 tis, mucopurulent cervicitis and Chlamydia trachomatis infections  
 including lymphogranuloma venereum.

(4) An "approved serology test" means the VDRL slide test or  
 RPR 18 mm circle card test or other test approved by the Cabinet  
 for Human Resources and performed as described in the current  
 edition of the "Manual of Tests for Syphilis" published by the United  
 States Public Health Service.

(5) The phrase "reasonably suspected of being infected with a  
 sexually transmitted disease" is considered to mean any person  
 either, named in a controlled interview with a second person in-  
 fected with a STD, as a sexual contact of that second person within  
 the incubation period for the STD, or having a laboratory test result  
 indicating a likelihood of infection with a STD.]

Section 2. Medial Examination and Treatment of Sexually Trans-  
 mitted Diseases for Which a Treatment Exists to Render them Non-  
 infectious. (1) Any person infected with, or reasonably suspected of  
 being infected with, a sexually transmitted disease shall undergo  
 such medical examination as is necessary, including such laboratory  
 testing procedures deemed advisable by the examining physician to  
 reasonably determine the existence or nonexistence of the diag-  
 nosed or suspected sexually transmitted disease.

(2) If [such person is determined to be infected with a sexually  
 transmitted disease or] there is the potential that the person is  
 incubating the disease, he shall undergo such treatment or follow-  
 up as may be determined adequate by the examining physician to  
 render the person noninfectious or to prevent the onset of disease.

(3) This section shall apply only to sexually transmitted diseases  
 as defined by Section 1(4)(2) of this administrative regulation.

Section 3. Investigation and Enforcement. (1) Only authorized  
 personnel of the Cabinet for Health and Family Services [Human  
 Resources] and local health departments assigned to sexually  
 transmitted disease control activities are empowered to carry out  
 the prevention and control provisions set forth in this administrative  
 regulation.

(2) Their duties shall include[, among other things,] the investi-  
 gation of persons known to be or reasonably suspected of being  
 infected with a sexually transmitted disease.

(3) Such authorized personnel are empowered to direct that  
 medical examinations, including laboratory tests, be conducted on  
 [of] persons reasonably suspected of having a sexually transmitted  
 disease

(4) This section shall apply only to sexually transmitted dis-  
 eases as defined by Section 1(4)(2) of this administrative regula-  
 tion.

Section 4. Certified or Accredited [Approved Serology] Labora-  
 tories for [Prenatal] Tests. (1) The laboratory shall hold certifica-  
tion or accreditation for performing tests for syphilis, in com-  
pliance with KRS 214.160.

(2) The laboratory shall have as its director a physician li-  
 censed to practice medicine in Kentucky or a person who meets  
 the requirements set forth in 902 KAR 11.030, Sections 1(4)(f) or  
 1(6)], Section 1(4)(f) or (6)].

(3) All (2) All] certified or accredited laboratory [approved]  
[laboratories] shall maintain [satisfactory] performance that meets  
the requirements of the Clinical Laboratory Improvement  
Amendments (CLIA), 42 U.S.C. 263(a), or the laboratory's  
[CLIA or other] certifying or accrediting body regulations for syphi-  
lis and other sexually transmitted disease testing.

(3) [in a serological test for syphilis proficiency test program  
 approved by the cabinet.

(a) Proficiency test results shall be reported on forms provided by the cabinet within seven (7) days after specimens are received. The following letter symbols shall be used:

N—Nonreactive  
W—Weakly Reactive  
R—Reactive

(b) Criteria for satisfactory test performance are:

1. Agreement with results of reference laboratories on individual specimens—ninety (90) percent.

2. Reproducibility on duplicate samples—ninety (90) percent.

(3) Certificates of approval shall be issued annually by the Cabinet for Human Resources to all laboratories evaluated and certified by the Cabinet for Human Resources.

(4) (4) All certified or accredited [approved serology] laboratories shall fully comply with all state and federal laws, including 42 U.S.C. 263a, and the [provisions of Kentucky's prenatal laws and with the] rules and administrative regulations of the Cabinet for Health and Family Services [Human Resources].

Section 5. Requirements for Reporting STD to Public Health.

(1) Midlevel health care practitioners [professionals] and physicians shall report STD cases as set forth in 902 KAR 2:020.

(a) Cases shall be reported to the local health department or the Division of Epidemiology, Department for Public Health using the form [an "EPID 200, Kentucky Reportable Disease Form"], prepared and furnished by the Cabinet for Health and Family Services or a computer-generated facsimile with the same data fields listed.

(b) Midlevel health care practitioners [professionals] shall report cases of primary, secondary, early latent, and congenital syphilis not later than twenty-four (24) hours after diagnosis.

(c) Cases of [with] other types of syphilis or [and] other reportable STD shall be reported within five (5) business days after diagnosis.

(2) Hospitals and institutions may conduct their own testing program within the institution or through a licensed medical laboratory.

(a) Hospitals and institutions that conduct their own testing program or contract with a licensed medical laboratory shall report positive test results within twenty-four (24) hours of testing to the attending physician or health care provider and shall report positive test results for primary, secondary, early latent, and congenital syphilis to the local health department or the Division of Epidemiology, Department for Public Health not later than twenty-four (24) hours after being processed by the laboratory.

(b) Positive test results for other types of syphilis and other STD should be reported to the local health department or Division of Epidemiology, Department for Public Health within five (5) business days.

(c) The obligation of hospitals and institutions that may conduct their own testing program within the institution or through a medical laboratory to report positive/reactive STD tests shall not supersede these reporting requirements for physicians or other midlevel health care practitioners [professionals].

(d) Reports to the Department for [ef] Public Health shall be submitted on the form [an "EPID 240, Report of Positive/Reactive Test for STD"], prepared and furnished by the Cabinet for Health and Family Services or a computer-generated facsimile with the same data fields listed.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference.

(a) "EPID 200, Kentucky Reportable Disease Form", edition 5/06; and

(b) "EPID 240, Report of Positive/Reactive Test for STD", edition 1/92.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Laboratory Services, 100 Sower Boulevard Suite 204, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAMS HACKER, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: February 15, 2007

FILED WITH LRC: March 1, 2007 at 4 p.m.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Mental Health and Mental Retardation Services**  
**Division of Administration and Financial Management**  
**(As Amended at ARRS, June 7, 2007)**

908 KAR 3:050. Per diem rates [rate pursuant to KRS 210.710-760].

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050(1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) 210.710 requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.700 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (3) [(2)] of this section that is provided. The per diem rate [through June 30, 2007] for room and board for each facility shall be as follows:

Facility	Rate
Central State Hospital	\$535
Central State - ICF/MR	\$750
Western State Hospital	\$455
Western State Nursing Facility	\$235
Outwood ICF/MR	\$290
Oakwood Community Center	\$520
Hazelwood Center	\$605
Glasgow State Nursing Facility	\$265
Del Mana	\$625
Meadows	\$655
Windsong	\$635
Eastern State Hospital	\$440
Volta House	\$140

(2) Effective July 1, 2007, the per diem rate shall be as follows:

Facility	Rate
Central State Hospital	\$535
Central State - ICF/MR	\$790
Western State Hospital	\$455
Western State Nursing Facility	\$245
Outwood ICF/MR	\$290
Oakwood Community Center	\$655
Hazelwood Center	\$645
Glasgow State Nursing Facility	\$290
Del Mana	\$645
Meadows	\$635
Windsong	\$670
Eastern State Hospital	\$440
Volta House	\$140

~~(2)(3)~~ A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section:

- (a) Physicians services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;
- (g) Laboratory;
- (h) Speech therapy;
- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia;
- (n) Electroshock therapy;
- (o) Physician assistant; or
- (p) Advanced registered nurse practitioner.

Section 2. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be established ~~fixed~~ using the last available cost report increased for inflation. Current rates shall be posted at each facility.

JOHN M. BURT, Ed.D., Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: April 6, 2007

FILED WITH LRC: April 13, 2007 at 10 a.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Mental Health and Mental Retardation Services  
Division of Administration and Financial Management  
(As Amended at ARRS, June 7, 2007)

**908 KAR 3:060. "Means test" for determining patient liability.** ~~[pursuant to the "Patient Liability Act of 1978."]~~

RELATES TO: KRS 210.710, 210.720, and 210.730 ~~[210.700-210.760]~~

STATUTORY AUTHORITY: KRS ~~[13A-210, Chapter 13B, 194A.050 [494.060], 210.710(4), 210.720(3), 210.750~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.710(4) and 210.720(3) require the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the Cabinet ~~for Health and Family Services~~, for the mentally ill or mentally retarded. This administrative regulation establishes the "Means test" for making that determination ~~[in compliance with KRS 210.710 to KRS 210.760].~~

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward their care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2)

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

(a) Salaries;

- (b) Wages;
  - (c) Self-employed gross revenues, less operating expenses;
  - (d) Benefit payments, except for Supplemental Security Income payments;
  - (e) Social Security payments;
  - (f) Rents;
  - (g) Royalties;
  - (h) Pensions;
  - (i) Retirement payments;
  - (j) Veteran's Administration payments;
  - (k) Black lung benefits;
  - (l) Railroad retirement benefits;
  - (m) Gifts;
  - (n) Settlements;
  - (o) Trust receipts;
  - (p) Alimony, but does not include child support payments;
  - (q) Interest income; and
  - (r) Income from investments.
- (6) "Patient" means a person admitted to a facility.
- (7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form. This form shall be explained to the patient or person responsible for the patient and signed by all parties. If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3:050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or

(b) The amount the patient is deemed able to pay in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) The following shall be allowed deductions from income:

- (a) Federal income taxes;
- (b) State income taxes;
- (c) Social security taxes;
- (d) Normal retirement contributions;
- (e) Unpaid medical and dental bills;
- (f) Health insurance premiums;
- (g) Medicare Part B insurance premiums;
- (h) Long-Term Care insurance premiums;
- (i) A personal needs allowance of forty (40) dollars per month;
- (j) Student loan payments;
- (k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;
- (l) Child support payments;
- (m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and
- (n) A basic maintenance allowance, derived from the Poverty

Guidelines, as contained in the Basic Maintenance Allowance Table [Table 1] of Section 3(6) of this administrative regulation for the size of the patient's family if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;
  2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort;
  3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration; and
  4. Dependents used in the calculation of the basic maintenance allowance shall include a legally-recognized spouse and each individual less than eighteen (18) years of age and in the patient's care.
- (6) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed in lieu of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction if they can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

- (a) Prepaid burial plans of up to \$1,500 per family member;
- (b) Automobiles;
- (c) Housing structures;
- (d) Land;
- (e) Retirement accounts;
- (f) Pension funds;
- (g) Trust funds that cannot be accessed;
- (h) The applicable amount contained in the Ability To Pay Assets Table [Table II] of Section 3(6) of this administrative regulation for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n)4 of this section; and
- (i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay.

(1) The facility shall calculate the ability to pay amount utilizing either the "ABILITY TO PAY WORKSHEET" or the "DEDUCTIBLE ABILITY TO PAY WORKSHEET" as appropriate:

- (a) Determine the total amount of income of the patient or person responsible for the patient;
- (b) Determine the amount of allowed deductions from income in accordance with Section 2(5) of this administrative regulation;
- (c) Subtract the allowed deductions from income; and
- (d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

- (a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and
- (b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3:050. Any remaining liability shall be satisfied as follows with the exception of ability to pay amounts arising from deductibles:

- (a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;
- (b) Any liability that remains after application of the average available income shall be satisfied by available assets; and
- (c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.
- (4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for the mentally retarded, or psychiatric hospital in accordance with 907 KAR 1 655, that Medicaid income assessment shall be relied upon in lieu of the ability to pay provisions established in this administrative regulation.

(6) After the ability to pay is determined for the patient or person responsible for the patient, a "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form shall be completed. This form shall be explained to the patient or person responsible for the patient and signed by all parties. If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty threshold guidelines. The poverty guidelines shall be as follows:

(a) Poverty guidelines effective July 1, 2006 through June 30, 2007 are as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$9,800
2	\$13,200
3	\$16,600
4	\$20,000
5	\$23,400
6	\$26,800
7	\$28,300
8	\$31,670

\*For each additional dependent, add \$3,400.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	4,000
3	4,050
4	4,100

\*For each additional dependent, add fifty (50) dollars.

(b) Poverty guidelines effective July 1, 2007 are as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from Income*
1	\$10,210
2	\$13,690
3	\$17,170
4	\$20,650
5	\$24,130
6	\$27,610
7	\$31,090
8	\$34,570

\*For each additional dependent, add \$3,480 dollars

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

\*For each additional dependent, add fifty (50) dollars

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

- (a) Income revisions;
- (b) Asset revisions including exhaustion of available assets;
- (c) Change in allowed deductions;

(d) Change in a dependent of the patient or person responsible for the patient; or

(e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised "ABILITY TO PAY WORKSHEET" or "DEDUCTIBLE ABILITY TO PAY WORKSHEET" shall be prepared along with a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form and a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures. (1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation that person, [they] may appeal the determination to the facility director or the facility director's [their] designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's [their] designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person [they] may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, 4th Floor [(4E-A)], Frankfort, Kentucky 40621-0001. The director [who] shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's or person responsible for the patient's position and include all necessary supporting documentation.

(3) Waivers.

(a) The director of each facility may waive payment of his or her facility's charges under this administrative regulation if waiver is deemed to be in the best interest of all parties.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is deemed to be in the best interest of all parties.

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

(a) "MHMR 3 060-1 ["]ABILITY TO PAY WORKSHEET", March 2007 [(March 2006)];

(b) "MHMR 3 060-2 ["]DEDUCTIBLE ABILITY TO PAY WORKSHEET", March 2007 [(March 2006)];

(c) "MHMR 3:060-3 ["]PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT", [(August

2004)]; and

(d) "MHMR 3:060-4 ["]PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD", [(March 2006)];.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN M. BURT, Ed D., Commissioner

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: April 6, 2007

FILED WITH LRC: April 13, 2007 at 10 a.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

EDUCATION CABINET  
Kentucky Board of Education  
Department of Education  
(Amended After Comments)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)

STATUTORY AUTHORITY: KRS 156.070(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

- (1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
- (2) Sponsor an annual meeting of its member schools;
- (3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;
- (4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
- (5) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by October 31;
- (6) Advise the Department of Education of all legal action brought against the KHSAA by October 31;
- (7) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;
- (8) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;
- (9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
- (10) Permit the Board of Control to assess fines on a member school;
- (11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;
- (12) Establish a philosophical statement of principles to use as a guide in an eligibility case;
- (13)(a) Conduct field audits of the association's entire membership over a five (5) year period regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit summary reports including the highlighting of any deficiencies in compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested; and
- (b) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX).
- (14) Conduct all meetings in accordance with KRS 61.805 through 61.850; and
- (15) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superin-

tendent and principal of the involved school district and school prior to being made public.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

- (a) Draft budget for the next two (2) fiscal years, including the current year;
- (b) End-of-year budget status report for the previous fiscal year;
- (c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
- (d) A summary report of operations including financial, legal and administrative summaries of actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:
  1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
  2. Eligibility rules;
  3. Duties of school officials;
  4. Contests and contest limitations;
  5. Requirements for officials and coaches; and
  6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and
- (e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.
- (2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 4. The bylaws, tournament rules, and due process procedures of the KHSAA Handbook, Fall 2007, June 14, 2007, [2006] shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) "Kentucky High School Athletic Association Handbook, Fall 2007, June 14, 2007, [2006], Kentucky High School Athletic Association, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner of Education  
KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: June 14, 2007 at 11 a.m.

CONTACT PERSON Kevin M. Noland, Interim Commissioner, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in

the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts, and publishes changes in bylaws, procedures and rules for affected schools and districts.

(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: These amendments make changes to the document incorporated by reference, in the KHSAA Constitution and in KHSAA Bylaws 4, 6, 7, 9, 10, 17, 25, 27, 29 and 33 as adopted by the KHSAA Delegate Assembly.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage high school interscholastic athletics. The regulation designates the KHSAA as that agent, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, and Due Process to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input member schools and districts on changes that need to be made to provide a more sound structure of governance.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 175 School Districts

(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: There will be little impact because of the nature of the changes to the regulation.

(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: KHSAA is funded through membership fees and dues, as well as from gate receipts from sporting events.

(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 was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

## 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? school districts

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 702 KAR 7.065.

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 additional expense to school districts

(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 proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## EDUCATION CABINET Kentucky Board of Education Department of Education (Amended After Comments)

### 707 KAR 1:280. Definitions.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.662, 20 U.S.C. 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1400 et seq and 34 C.F.R. Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes definitions for this chapter of administrative regulations regarding special education.

Section 1. Definitions. (1) "Admissions and release committee (ARC)" means a group of individuals described in 707 KAR 1:320, Section 3, that is responsible for developing, reviewing, or revising an individual education program (IEP) for a child with a disability.

(2) "Adverse effect" means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.

(3) "[Application]" means a written request for funds which addresses requirements or terms to be met on a continuing basis in



order for funds to be released or paid to or on behalf of the applicant.

(4) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not mean a medical device that is surgically implanted, or the replacement of such a device.

(4) [(6)] "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, like those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

(5) [(6)] "Autism" means a developmental disability significantly effecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely effects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely effected primarily because the child has an emotional-behavior disability.

(6) [(7)] "Business day" means Monday through Friday except for federal and state holidays, unless a holiday is specifically included in the designation of business day as in 707 KAR 1:370, Section 1.

(7) [(8)] "Caseload for special classes" means the number of children with disabilities assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services in a special class setting.

(8) "Change of placement because of disciplinary removals" means a change of placement occurs if:

(a) The removal is for more than ten (10) consecutive school days; or

(b) The child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:

(i) The series of removals total more than ten (10) school days in a school year;

(ii) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Of additional factors including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one (1) another.

(9) "Child with a disability" means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed in this section for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child's educational performance and who, as a result, needs special education and related services.

(10) "Class size for resource classes" means the number of children with disabilities assigned to a teacher of exceptional children per period, block, or the specified length of the time set by the

individual school.

(11) "Collaboration" means, for purposes of determining class size in 707 KAR 1:350, Section 2, a teacher of exceptional children works with children with disabilities in the regular classroom to provide specially-designed instruction and related services.

(12) "Complaint" means a written allegation that a local education agency (LEA) has violated a requirement of the Individuals with Disabilities Education Act (IDEA) or an implementing administrative regulation, and the facts on which the statement is based.

(13) "Compliance" means the obligations of state or federal requirements are met.

(14) "Compliance monitoring report" means a written description of the findings of an investigation, like on-site monitoring, citing each requirement found in noncompliance.

(15) "Consent" means:

(a) A parent has been fully informed of all information relevant to the activity for which consent is sought, in his native language, or other mode of communication;

(b) A parent understands and agrees in writing to the carrying out of the activity for which his consent is sought, and the consent describes the activity and lists the records, if any, that will be released and to whom; and

(c) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and

(d) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(16) "Controlled substance" means a drug or other substance identified under 21 U.S.C. Section 812(c).

(17) "Core academic subjects" means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography.

(18) "Corrective action plan (CAP)" means a written improvement plan describing activities and timelines, with persons responsible for implementation, developed to correct identified areas of noncompliance, including directives from the Kentucky Department of Education, specifying actions to be taken to fulfill a legal obligation.

(19) "Course of study" means a multiyear description of coursework from the student's current school year to the anticipated exit year designed to achieve the student's desired post-school goals.

(20) [(48)] "Day" means calendar day unless otherwise indicated as business day or school day.

(21) [(49)] "Deaf-blindness" means concomitant hearing and visual impairments that have an adverse effect on the child's education performance, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.

(22) [(20)] "Deficiency" means noncompliance.

(24) "Developmental delay (DD)" means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one (1) or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and current level of performance. The discrepancy shall be documented by:

(a) Scores of two (2) standard deviations or more below the mean in one (1) of the areas listed above as obtained using norm-referenced instruments and procedures; or

(b) Scores of one and one-half (1 1/2) standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures; or

(c) The professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

(23) [(22)] "Education records" means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232(g).

(24) [(23)] "Emotional-behavioral disability (EBD)" means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one (1) or more of the following, when compared to the child's peer and cultural reference groups, across settings, over a long period of time and to a marked degree:

(a) Severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;

(b) Severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;

(c) A general pervasive mood of unhappiness or depression; or

(d) A tendency to develop physical symptoms or fears associated with personal or school problems.

This term does not apply to children who display isolated (not necessarily one(1)) inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

(25) [(24)] "Enforcement" means the Kentucky Department of Education takes steps to ensure federal and state special education requirements are implemented.

(26) [(25)] "Extended school year services" means specially designed instruction and related services that are provided to a child with a disability beyond the normal school year in accordance with the child's IEP at no cost to the parents.

(27) [(26)] "Free appropriate public education (FAPE)" means special education and related services that:

(a) Are provided at public expense, under public supervision and direction, and without charge,

(b) Meet the standards of the Kentucky Department of Education included in 707 KAR Chapter 1 and the Program of Studies, 704 KAR 3:303, as appropriate;

(c) Include preschool, elementary school, or secondary school education in the state; and

(d) Are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.

(28) "Functional" means activities and skills that are not considered academic or related to a child's academic achievement as measured on statewide assessments contained in 703 KAR Chapter 5.

(29) "Hearing Impairment" (sometimes referred to as deaf or hard of hearing) means a hearing loss that:

(a) May be mild to profound, unilateral or bilateral, permanent or fluctuating, and is determined by:

1. An average pure-tone hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 25dB in the better ear;

2. An average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or

3. An average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear;

(b) Results in difficulty identifying linguistic information through hearing; and

(c) Has an adverse effect on the child's educational performance.

(a) May be mild to profound, unilateral or bilateral, permanent or fluctuating, and is determined by:

1. An average pure-tone hearing loss in the speech range (500-2000Hz) of at least twenty-five (25) dBHL in the better ear;

2. An average high-frequency pure-tone hearing loss of at least thirty-five (35) dBHL in the better ear for two (2) or more of the following frequencies: 2000, 4000, or 6000Hz; or

3. A unilateral hearing loss of at least 60dBHL as determined by either subparagraphs 1 or 2 of this paragraph;

(b) Results in difficulty processing linguistic information through hearing; and

(c) Has an adverse effect on the child's educational performance.

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(30) "High school diploma" means the student has completed the required course of study with the minimum number of credit hours as required by 704 KAR 3:305 and any applicable local district requirements. "High school diploma" does not mean a certificate of completion or a GED.

(31) [(27)] "Hearing impairment (HI)" means that a child has a hearing loss that has an adverse effect on the child's educational performance, whether permanent or fluctuating, ranging from mild to profound (a loss of twenty-five (25) decibels (dB) or greater exists through speech frequencies of 500, 1000, and 2000 Hertz (Hz) in the better ear), and of a degree that the child is impaired in the processing of linguistic information through hearing, with or without amplification.

(28) "Home school" means for purposes of 707 KAR Chapter 1 only, a private school primarily conducted in one's residence.

(32) [(29)] "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 et seq., as amended.

(33) [(30)] "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

(34) [(31)] "Individual education program (IEP)" means a written statement for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320.

(35) "Interpreting services" means, with respect to children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services such as communication access real-time translation (CART), C-Paint and TypeWell and special interpreting services for children who are deaf-blind.

(36) [(32)] "Local educational agency (LEA)" means a public local board of education or other legally constituted public authority that has either administrative control or direction of public elementary or secondary schools in a school district or other political subdivision of the Commonwealth. LEA also means any other public institution or agency, including the Kentucky School for the Blind (KSB) and the Kentucky School for the Deaf (KSD), that is charged by state statute with the responsibility of providing educational services to children with disabilities.

(37) [(33)] "Mental disability" means that a child has one (1) of the following:

(a) A mild mental disability (MMD) in which:

1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;

2. Adaptive behavior deficit is at least two (2) standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Is typically manifested during the developmental period; or

(b) A functional mental disability (FMD) in which:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean;

2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean;

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Is typically manifested during the developmental period.

(38) [(34)] "Monitoring" means gathering and reviewing information to determine if a project or program meets state and IDEA [federal special education] requirements including the implementation of corrective action plans.

(39) [(35)] "Multiple disabilities (MD)" means concomitant impairments that have an adverse effect on the child's educational performance (e.g., mental disability-blindness, mental disability-orthopedic impairment, etc.), the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one (1) of the impairments. Multiple disabilities does not mean deaf-blindness nor does it mean a speech or language impairment in combination with another category of disability.

(40) [(36)] "Native language" means, if used in reference to an individual of limited English proficiency, the following:

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the

child;

(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; or

(c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual (e.g., sign language, Braille, or oral communication).

(41) [(37)] "Orthopedic impairment (OI)" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes an impairment caused by a congenital anomaly (e.g., clubfoot, absence of some member, etc.), an impairment caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and an impairment from other causes (e.g., cerebral palsy, amputations, and fractures or burns that causes contractures).

(42) [(38)] "Other health impairment (OHI)" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(a) Is due to a chronic or acute health problem, e.g., acquired immune deficiency syndrome, asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, or tuberculosis, and

(b) Adversely affects a child's educational performance.

(43) [(39)] "Parent" means:

(a) A biological [natural] or adoptive parent of a child;

(b) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

(c) A person acting in the place of a biological or adoptive parent (e.g., a grandparent or stepparent, or other relative with whom the child lives) or a person who is legally responsible for the child's welfare;

(d) A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 7; or

(e) A foster parent if the biological or adoptive [natural] parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child.

(44) [(40)] "Participating agency" means a state or local agency other than the LEA that is financially and legally responsible for providing transition services to a child with a disability.

(45) [(41)] "Personally identifiable information" means information that includes the name of the child, the child's parents, or other family member, the address of the child, a personal identifier, including the child's Social Security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(46) "Postsecondary goals" means those goals that a student hopes to achieve after leaving secondary school (i.e., high school).

(47) [(42)] "Private school children with disabilities" means children with disabilities enrolled by their parents in private elementary or secondary school as defined by IDEA regulations, 34 C.F.R. Part 300.13 and 300.36, [schools] and not children with disabilities enrolled in private schools upon referral by a LEA.

(48) [(43)] "Public expense" means that the LEA either pays for the full cost of the services to meet the requirements of 707 KAR Chapter 1 or ensures that the services are otherwise provided at no cost to the parent. Nothing in these administrative regulations shall relieve an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(49) [(44)] "Qualified personnel" means personnel who meet the statutory or regulatory qualifications for each respective profession currently applicable in this state.

(50) [(45)] "Reasonable efforts to obtain voluntary compliance" means active and ongoing efforts by the Kentucky Department of Education through technical assistance and negotiation to arrive at an acceptable corrective action plan and follow through on an

agreed-upon corrective action plan.

(51) [(46)] "Related services" means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also means school health services and school nurse services, social work services in school, and parent counseling and training. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping) maintenance of that device, or the replacement of that device. However, nothing in 707 KAR Chapter 1 limits:

a. The responsibility of the LEA to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school;

b. Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly; or

c. The right of a child with a surgically-implanted device to receive related services that are determined by the ARC to be necessary for the child to receive FAPE.

(52) [(47)] "Sanctions" means actions (e.g., technical assistance, consultation, or training, among others) taken by the Kentucky Department of Education in response to a LEA's failure to comply with the required standards in state and federal laws and administrative regulations.

(53) [(48)] "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. School day means the same thing for all children in school, including children with or without disabilities.

(54) "Serious bodily injury" means bodily injury as established in 18 U.S.C. Section 1365(h)(3).

(55) "Services plan" means a written statement that describes the special education or related services that the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary that is developed in accordance with 707 KAR 1.370.

(56) [(49)] "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability including instruction in the classroom, in the home, in hospitals and institutions, and in other settings. Special education means speech-language pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

(57) [(50)] "Special education mentor" means individuals with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197.

(58) [(51)] "Specially-designed instruction" means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies, 704 KAR 3.303.

(59) [(52)] "Specific learning disability (LD)" means a disorder that adversely affects the ability to acquire, comprehend, or apply reading, mathematical, writing, reasoning, listening, or speaking skills to the extent that specially designed instruction is required to benefit from education. The specific learning disability (LD) may include dyslexia, dyscalculia, dysgraphia, developmental aphasia, and perceptual/motor disabilities. The term does not include deficits that are the result of other primary determinant or disabling factors such as vision, hearing, motor impairment, mental disability, emotional/behavioral disability, environmental or economic disadvantage, cultural factors, limited English proficiency, or lack of relevant research-based instruction in the deficit area.

(60) [in-one (1)-or more-of-the-basic-psychological-processes

involved in understanding or in using language, spoken or written, that may manifest itself in diminished ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions like perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(53) [(53)] "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, a voice impairment, delayed acquisition of language, or an absence of language, that adversely affects a child's educational performance.

(61) [(54)] "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 707 KAR 1:350.

(62) [(55)] "Transition services" means a coordinated set of activities for a child with a disability that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's [within an outcome-oriented process (i.e., a process that outlines how a student will achieve goals consistent with the general curriculum, as appropriate), that promotes] movement from school to post-school activities; including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the child's strengths, preferences, and interests; and

(c) Includes:

1. Instruction;
2. Related services; [and]
3. Community experiences;
4. The development of employment and other post-school adult living objectives; and
5. If appropriate, acquisition of daily living skills and functional vocational evaluation.

(63) [(56)] "Traumatic brain injury (TBI)" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one (1) or more areas, including:

- (a) Cognition;
- (b) Language;
- (c) Memory;
- (d) Attention;
- (e) Reasoning;
- (f) Abstract thinking;
- (g) Judgment;
- (h) Problem-solving;
- (i) Sensory, perceptual, and motor abilities;
- (j) Psychosocial behavior;
- (k) Physical functions;
- (l) Information processing; and
- (m) Speech.

(64) [(57)] "Travel training" means instruction to children with significant cognitive disabilities and any other children with disabilities, as appropriate, to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment (e.g., school, home, work and community).

(65) [(58)] "Visual impairment (VI)" means a child has a vision loss, even with correction, as follows.

- (a) Visual acuity even with prescribed lenses that is 20/70 or worse in the better eye; or
- (b) Visual acuity that is better than 20/70 and the child has one (1) of the following conditions:

1. A medically-diagnosed progressive loss of vision;
2. A visual field of twenty (20) degrees or worse;
3. A medically diagnosed condition of cortical blindness; or
4. A functional vision loss;
- (c) Requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration; and
- (d) Has an adverse effect on the child's educational performance.

(66) [(59)] "Ward of the state" means a child who has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice through a legal process, whether the commitment is voluntary or nonvoluntary and the biological or adoptive [natural] parental rights have been terminated.

(67) [(60)] "Weapon" means dangerous weapon as defined in 18 U.S.C. Section 930(g)(2).

(68) [(64)] "Withholding" means no further payment of specified funds are made to an approved recipient.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner of Education

KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: June 14, 2007 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for the chapter of administrative regulations regarding special education.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to establish the meaning of new definitions utilized within 707 KAR Chapter 1, as required by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400-1419.

(c) How this administrative regulation conforms to the content of the authorizing statute: While a portion of the amendment tracks federal law where necessary, the Kentucky Board of Education (KBE) is required to develop other definitions required under IDEA, with an eye to state law, court cases and past practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Without clear, concise definitions, the remainder of the regulations which are based upon the definitions cannot be effectively administered

(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 majority of the definitions remain the same. Several areas have been added, due to the recent amendment of federal law. A few definitions were deleted as unnecessary.

(b) The necessity of the amendment to this administrative regulation: Unless the required federal language is added to the definitions, school districts will be unable to understand their obligations under the new federal requirements.

(c) How the amendment conforms to the content of the authorizing statute: Changes in the federal definitions, particularly in the area of Specific Learning disability, were carefully consulted prior to making a parallel amendment to Kentucky's regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment encompasses changes in federal definitions of disability categories, related services, private schools children with disabilities, and discipline among others. Without amendments to the definitions, school districts would be in danger of violating federal law. Since the Kentucky Departments of Education is required to monitor local school districts in the area of special education, the KBE is providing districts with the State's version of the IDEA definitions, so KDE may more ably administer the law

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

zations, or state and local governments affected by this administrative regulation: Students with disabilities, parents of students with disabilities, public school districts, superintendents, Admissions and Release Committees (ARC), directors of special education, principals, teachers, and private school districts as well as supporting staff in the Kentucky Department of Education.

(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: School districts will be required to rewrite policies and procedures on discipline, related services and identifying students with Specific Learning disabilities; as well as the procedural safeguards provided to parents. Professional development will be required for directors of special education, Admissions and Release Committee, and teachers, particularly in the area surrounding the new definition of Specific Learning Disability. Parents will need to be trained as well on the new definitions.

(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: Districts will need to amend local policies and procedures and procedural safeguards notice given to parents. KDE staff will provide training and technical assistance to districts and parents

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Many local school districts belong to the Kentucky School Boards Association which develops a template for district policies and procedures. Districts may also obtain model policies and procedures from their special education cooperatives. The procedural safeguards notice is developed by KDE and is free to districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts and parents will have a common understanding of the definitions in the new regulation, which will prevent misunderstandings between the parties and will lessen the need for use of dispute mechanisms by the parties.

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

(a) Initially: The proposed amendment does not result in additional cost since posting the regulations on the KDE web site has eliminated the need for printing vast numbers of regulation booklets.

(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: Federal monies allocated under Individuals with Disabilities Education Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. The IDEA federal funding as mentioned above is expected to assist in the cost 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

#### 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? School Districts

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. "Individuals with Disabilities Act", 20 U.S.C. § 1400-1419, 34 C.F.R. 300.662

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 meets the federal regulatory requirements for the school district to receive the monies allocation by the Individuals with Disabilities Education Act.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of monies allocated to each district is based on a formula using the district specific data such as, poverty index, numbers of students meeting eligibility guidelines, etc.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of funds vary based on the total allocated to the U.S. Department of Education from Congress.

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Individuals with Disabilities Act allocates funds to states to provide for some of the excess costs associated with the education of students with disabilities. This amount varies for both the state and the school districts depending on the total amount awarded by Congress to the Office of Special Education Programs in the U.S. Department of Education. Additionally, the district allocation varies depending on the count of eligible students and other factors specific to each school district.

#### FEDERAL MANDATE ANALYSIS COMPARISON

Contact person: Kevin M. Noland

1. Federal statute or regulation constituting the federal mandate.

"Individuals with Disabilities Act", 20 U.S.C. § 1400-1419, 34 C.F.R. 300.662

2. State compliance standards. KRS 157.200-290

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes definitions for this chapter of administrative regulations regarding special education.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable

#### EDUCATION CABINET

Kentucky Board of Education

Department of Education

(Amended After Comments)

707 KAR 1:320. Individual education program.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.662, 20 U.S.C. 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in

accordance with state and federal laws. 20 U.S.C. 1400 et seq. and 34 C.F.R. Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for the development, implementation, and revision of individual education programs for each child with a disability.

Section 1. Individual Education Programs. (1) An LEA shall ensure the an IEP is developed and implemented for each child with a disability served by that LEA, and for each child with a disability placed in or referred to a private school or facility by the LEA.

(2) Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident LEA, shall ensure that an IEP is developed and implemented for each child with a disability placed in its school by an ARC.

(3) An LEA shall have an IEP in effect for each child with a disability within in its jurisdiction at the beginning of each school year.

(4) An LEA shall ensure the IEP:

(a) Is in effect before specially designed instruction and related services are provided to a child with a disability; and

(b) Is implemented as soon as possible following an ARC meeting.

(5) An LEA (or state agency responsible for developing the child's IEP) shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.

(6) An LEA shall ensure that:

(a) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation;

(b) Prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child's IEP; and

(c) The specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.

(7) An IEP shall be in place for all eligible children aged three (3) through five (5).

Section 2. ARC Meetings. (1) An LEA shall ensure that each child has an ARC which includes the membership in Section 3 of this administrative regulation and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

(2) An ARC shall not have to be convened in order to make minor, nonprogrammatic, changes to an IEP, such as typographical errors, incorrect directory information about the student (i.e. birth date, age, grade, address, school, etc), and other information required on the IEP that was agreed upon by the ARC but incorrectly recorded. If the LEA makes any minor, nonprogrammatic changes, all members of the ARC shall be given a copy of the changes and an explanation as to why the changes were made within ten (10) school days of the changes being made. If any member of the ARC objects to the changes, an ARC meeting shall be convened within a reasonable period of time to discuss the changes.

(3) An LEA shall ensure that within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child:

(a) The child will be evaluated; and

(b) If the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP.

(4) ~~(3)~~ Within this sixty (60) school day period, an LEA shall ensure that the ARC meeting to develop an IEP for the child is conducted within thirty (30) days of the determination that the child is eligible.

(5) The sixty (60) school day timeline shall not apply in the following situations:

(a) If the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new LEA is making sufficient progress to complete the evaluation and the parent and the LEA agree to a specific time

when the evaluation shall be completed; or

(b) If the parent repeatedly fails or refuses to produce the child for evaluation.

~~(6)~~ ~~(4)~~ An LEA shall ensure that the ARC:

(a) Reviews each child's IEP periodically, but no less than annually, to determine whether the annual goals for the child are being achieved; and

(b) Revises the IEP as appropriate to address:

1. Any lack of expected progress toward the annual goals;

2. Any lack of expected progress in the general curriculum, if appropriate;

3. The results of any reevaluation;

4. Information about the child provided by or to the parents;

5. The child's anticipated needs; and

6. Other matters.

Section 3. ARC Membership. (1) An LEA shall ensure that the ARC for each child with a disability includes:

(a) The parents of the child;

(b) Not less than one (1) [A] regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general curriculum for same aged peers;

(c) Not less than one (1) [A] special education teacher of the child or a special education teacher who is knowledgeable about the child's suspected disability or, if appropriate, at least one (1) special education provider of the child;

(d) A representative of the LEA who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the LEA;

(e) An individual who can interpret the instructional implications of evaluation results who may be a member of the team described in paragraphs (b) through (d) of this subsection;

(f) An individual who has knowledge or special expertise regarding the child at the discretion of the parent or the LEA;

(g) Related services personnel, as appropriate; and

(h) The child, if appropriate.

(2) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the LEA agree in writing prior to the ARC meeting that the attendance of that member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the ARC meeting.

(3) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the LEA agree in writing prior to the ARC meeting to waive the attendance of that member even though the member's area of curriculum or related services will be discussed or modified if:

(a) The parent and the LEA consent in writing to the excusal; and

(b) The member submits, in writing, to the parent and the ARC team, input into the development of the IEP prior to the meeting.

(4) If the purpose of the ARC is to discuss transition services for a child with a disability as described in Section 4(3) and (4) of this administrative regulation, the child shall be invited to the ARC. If the child does not attend the ARC meeting, the LEA shall take other steps to ensure that the child's preferences and interests are considered. A public agency that is likely to be responsible for providing or paying for transition services shall also be invited to the extent appropriate and with the consent of the parent or the child, if the child is an emancipated adult. If the representative of the other public agency does not attend, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

(5) If the purpose of the ARC is to determine eligibility for a child suspected of having a specific learning disability, the ARC shall also include the personnel listed in 707 KAR 1:310, Section 2(1), in addition to the personnel listed in subsection (1) of this section.

(6) If the purpose of the ARC meeting is to discuss transition from the early intervention program into the preschool program, the LEA shall invite a representative of the early intervention program



to the initial transition ARC if the parent requests. At the ARC meeting, the child's previous Individualized Family Service Plan that was used by the early intervention program shall be considered when developing the new IEP for the child.

Section 4. Parent Participation. (1) An LEA shall ensure that one (1) or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate. Parents shall be notified of the meeting early enough to ensure that they will have an opportunity to attend, and the meeting shall be scheduled at a mutually-agreed-on time and place.

(2) An LEA shall send an ARC meeting invitation to the parents which includes:

- (a) The purpose;
- (b) Time;
- (c) Location of the meeting;
- (d) Who will be in attendance; and

(e) Information that the parents may invite people with knowledge or special expertise of the child to the meeting; and

(f) Information that the LEA will invite representatives from the early intervention program to the initial meeting, if the parents request.

(3) If the child is in the eight grade year, or has reached the age of fourteen (14) years [at least fourteen (14) years of age], the invitation shall indicate that a purpose of the meeting will be the development of a statement for the need for transition services of the child and indicate that the child is invited. This subsection shall apply to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.

(4) For a child with a disability, beginning not later than the IEP to be in effect when the child turns sixteen (16) [if the child is at least sixteen (16) years of age], the invitation shall indicate that a purpose of the meeting is the consideration of the postsecondary goals and needed transition services for the child and shall include the identity of any other agency that is invited to send a representative. This subsection shall apply to a child younger than sixteen (16) years of age if determined to be appropriate by the ARC.

(5) An LEA shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference telephone calls or video conferencing.

(6) An ARC meeting may be conducted without a parent in attendance if the LEA is unable to convince the parent that he should attend. The LEA shall have a record of its attempts to arrange a mutually-agreed-on time and place, which may include:

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits to the parent's home or place of employment and the results of those visits.

(7) When using an interpreter or other action, as appropriate, an LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for the parents with deafness or whose native language is other than English.

(8) An LEA shall give the parent a copy of the child's IEP at no cost to the parent.

Section 5. Contents of IEP. (1) An ARC shall consider in the development of an IEP:

- (a) The strengths of the child and the concerns of the parents for enhancing the education of their child;
- (b) The results of the initial or most recent evaluation of the child; and
- (c) As appropriate, the results of the child's performance on any general state or districtwide assessment programs; and

(d) the academic, developmental, and functional needs of the child.

(2) An ARC shall:

(a) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(b) In the case of a child with limited English proficiency, con-

sider the language needs of the child as those needs relate to the child's IEP;

(c) In the case of the child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(d) Consider the communication needs of the child;

(e) In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(f) Consider whether the child requires assistive technology.

(3) All the factors listed in this section shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.

(4) Once the ARC has considered all the factors listed in this section the ARC shall include a statement on the IEP indicating the needs for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE).

(5) A regular education teacher of the child, as a member of the ARC, shall, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate:

(a) Positive behavioral interventions and strategies for the child;

(b) Supplementary aids and services; and

(c) Program modifications or supports for school personnel that will be provided for the child.

(6) An ARC shall not be required to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP.

(7) The IEP for each child shall include:

(a) A statement of the child's present levels of academic achievement and functional [educational] performance, including how the child's disability affects the child's involvement and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 KAR 3.303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(b) A statement of measurable annual goals, including academic and functional goals, designed [benchmarks or short-term objectives related to]:

1. Meet [Meeting] the child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 KAR 3.303, or for preschool children, as appropriate, to participate in appropriate activities; and

2. Meet [Meeting] the child's other educational needs that result from the disability.

(c) A LEA's procedures may determine the use of benchmarks or short-term objectives for a child's IEP.

(8) An IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable to be provided to the child, or on behalf of the child. There shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:

(a) Advance appropriately toward attaining the annual goals;

(b) Be involved and make progress in the general curriculum;

(c) Participate in extracurricular and other nonacademic activities; and

(d) Be educated and participate with other children with and [or] without disabilities.

(9) An IEP shall contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes.

(10) An IEP shall contain a statement of any individual ac-



commodations [modifications] to be provided the child in order to participate in the state or districtwide assessment. These accommodations [modifications] shall be based on the requirements contained in 703 KAR 5:070, Inclusion of special populations in the state-required assessment and the accountability programs.

(11) If the ARC determines that the child meets the criteria for participation in the alternate portfolio, as provided in 703 KAR 5:070, it shall provide a statement of its decision and the reasons for the decision.

(12) An IEP shall include the projected date of the beginning of the services and modifications listed on the IEP and the anticipated frequency, location (i.e. regular or special education), and duration of the services and modifications.

(13) An IEP shall include a statement of:

(a) How the child's progress toward meeting the annual goals will be measured, and

(b) When periodic reports on the progress the child is making toward meeting the annual goals, (which may include the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided.

(14) At least one (1) year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of the child's rights under 707 KAR Chapter 1, and that the rights will transfer to the child upon reaching the age of majority.

(15) The IEP shall also include the requirements for transition services for eligible students as detailed in Section 7 of this administrative regulation.

**Section 6. Program for Students who Transfer.** (1) If a child with a disability transfers between school districts within the same academic year within Kentucky, and had an IEP in effect in Kentucky, the child shall be provided a free, appropriate public education including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the LEA adopts the previous IEP or develops, adopts and implements a new IEP.

(2) If a child with a disability transfers between school districts within the same academic year from outside the state, and had an IEP in effect in another state, the child shall be provided a free, appropriate public education including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the LEA conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP if the child meets the eligibility criteria as defined in 707 KAR 1.280.

(3) To facilitate the transition of a child who transfers, the receiving LEA shall take reasonable steps to obtain the child's records, including the IEP, supporting documents, and any other records, including discipline records, relating to the provision of special education and related services. The previous LEA shall take reasonable steps to promptly respond to such requests from the receiving LEA. [How the parents will be regularly informed, at least as often as the school or LEA informs parents of the progress of all children.

(14) A parent shall be informed of:

(a) Their child's progress toward the annual goals; and

(b) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.]

**Section 7. [6-] Transition Services.** (1) In the child's eighth grade year or when the child has reached the age of fourteen (14) years and in alignment with the child's Individual Learning Plan (as required by 704 KAR 3.305) [Beginning at age fourteen (14)], or younger if determined appropriate by the ARC, the IEP for a child with a disability shall include a statement of the transition service needs of the child under the applicable components of the child's IEP that focus on the child's course of study. This statement shall be updated annually.

(2) By the child's 16th birthday, the IEP shall include:

(a) Appropriate measurable postsecondary goals based upon age appropriate transition assessments, related to training, education, employment, and, where appropriate, independent living skills, and

(b) The transition services (including the course of study) needed to assist the child in reaching these goals. [For a child beginning at age sixteen (16), or younger if determined appropriate by the ARC, the IEP for a child with a disability shall include a statement of needed transition services for the child, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.]

(3) Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, and if required to assist a child with a disability to benefit from special education.

(4) [At least one (1) year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of his rights under 707 KAR Chapter 1 and that the rights will transfer to the child upon reaching the age of majority.

(6)] If an agency, other than the LEA, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP, the LEA (or the state agency responsible for developing the child's IEP) shall reconvene the ARC to identify alternative strategies to meet the child's transition objectives set out in the IEP.

(5) [(6)] A participating agency shall not be relieved of the responsibility under IDEA to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of the agency.

**Section 8. [7-] Private School Placements by the LEA.** (1) Prior to an LEA placing a child with a disability in, or referring a child to, a private school or facility, the LEA shall initiate and conduct an ARC meeting to develop an IEP for the child.

(2) The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) After a child with a disability is placed in a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

(4) If a private school or facility initiates the meetings, the LEA shall ensure that the parents and LEA staff are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. If a child with a disability is placed by the LEA in a private school or facility, the LEA shall remain responsible for compliance with 707 KAR Chapter 1.

(5) An LEA that places or refers a child with a disability in a private school shall ensure that the child:

(a) Is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR Chapter 1, and at no cost to the parents;

(b) Is provided an education that meets the standards of the LEA including general curriculum standards; and

(c) Has all the rights of any child with a disability served by the LEA.

**Section 9. [8-] IEP Accountability** (1) An LEA shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

(2) An LEA shall be responsible for including children with disabilities in the statewide assessment as provided in 703 KAR Chapter 5.

(3) The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel that good faith efforts are not being made.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner of Education

KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: June 14, 2007 at 11 a.m.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the development, implementation, and revision of Individual Education Programs (IEP) for each child with a disability.

(b) The necessity of this administrative regulation: Numerous changes in federal law regarding composition and convening of the Admission and Release Committee (ARC), evaluation procedures, provisions affecting elements of an IEP, post-secondary issues and transfer of rights to adult students required that state regulations come into compliance with federal law.

(c) How this administrative regulation conforms to the content of the authorizing statute: KDE has conformed to new federal law (IDEA) by making these changes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidance to school districts in the revised processes of determining eligibility for special education and writing IEPs. As such, it will assist KDE in effectively administering the new law.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies ARC membership including participation of outside agencies; sets forth the process for excusal from ARC meetings; relaxes evaluation timelines for school districts in specified situations; omits the requirement for short term objective in IEPs; and deals with a wide variety of secondary transition issues.

(b) The necessity of the amendment to this administrative regulation: The amendments to federal law were extensive in the areas cited in 2(a) above which required Kentucky to bring its regulations in line with new federal law.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the procedures sections of IDEA, including of evaluating students, determining eligibility, and writing IEPs that conform to student needs

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools information necessary for the implementing new processes required by IDEA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, superintendents, principals, teachers, parents and students with disabilities, First Steps providers who serve infants and toddlers with disabilities, Department of Vocational Rehabilitation, and supporting staff in the Kentucky Department of Education.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local school districts must revise their policies and procedures in the area of evaluation, ARC processes and IEP development. Districts and KDE must also give notice of the new provisions. Extensive technical assistance will not be required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Extension of timelines for evaluation will assist districts in situations where the districts experience difficulty in gaining access to the student; more flexibility is afforded school districts and their staff in participating in the ARC process. Additionally, the rights of parents and their children who are in the

process of secondary transition parents will be expanded.

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

(a) Initially: The proposed amendment does not result in additional costs since posting on the KDE web site will eliminate the need for printing the regulations to distribute to the public.

(b) On a continuing basis: No additional cost is anticipated..

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal monies allocated under Individuals with Disabilities Act.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

## 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? School Districts

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. "Individuals with Disabilities Act", 20 U.S.C. § 1400-1419, 34 C.F.R. 300.662

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 meets the federal regulatory requirements for the school district to receive the monies allocation by the Individuals with Disabilities Education Act.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of monies allocated to each district is based on a formula using the district specific data such as, poverty index, numbers of students meeting eligibility guidelines, etc.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of funds vary based on the total allocated to the U.S. Department of Education from Congress.

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Individuals with Disabilities Act allocates funds to states to provide for some of the excess costs associated with the education of students with disabilities. This amount varies for both the state and the school districts depending on the total amount awarded by Congress to the Office of Special Education Programs in the U.S. Department of Education. Additionally, the district allocation varies depending on the count of eligible students and other factors specific to each school district.

## FEDERAL MANDATE ANALYSIS COMPARISON

Contact person: Kevin M. Noland

1. Federal statute or regulation constituting the federal man-

date. "Individuals with Disabilities Act", 20 U.S.C. § 1400-1419, 34 C.F.R. 300.662

2. State compliance standards. KRS 157.200-290

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes requirements for the development, implementation, and revision of individual education programs for each child with a disability.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable

**EDUCATION CABINET  
Kentucky Board of Education  
Department of Education  
(Amended After Comments)**

**707 KAR 1:340. Procedural safeguards and state complaint procedures.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.662, 20 U.S.C. 1221(e), 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 mandates that the Kentucky Board of Education adopt rules and administrative regulations to generally carry out these programs. KRS 156.035 sets forth the authority of the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1400 et seq. and 34 C.F.R. Part 300 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

**Section 1. Parent Participation in Meetings.** (1) A parent of a child with a disability shall be afforded an opportunity to:

(a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and

(b) Participate in all ARC meetings concerning his child.

(2) An LEA shall provide parents a written notice of ARC meetings in accordance with this administrative regulation.

(3) A LEA may conduct an ARC meeting without a parent in attendance if the LEA is unable to convince the parent to attend. The LEA shall keep a record of its attempts to arrange a mutually agreed on time and place. These records may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; or

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(4) LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, [scheduled,] or unscheduled conversations on issues which may include:

(a) Teaching methodology [if these issues are not addressed in the child's IEP];

(b) Lesson plans [if these issues are not addressed in the child's IEP];

(c) Coordination of service provision [if these issues are not addressed in the child's IEP]; or

(d) Preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be dis-

cussed at a later ARC meeting.

**Section 2. Independent Educational Evaluation.** (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

(2) Upon receiving the request, the LEA shall provide information to the parent about where an independent educational evaluation may be obtained and the LEA's applicable criteria for independent educational evaluations.

(3) The parent's request for an independent educational evaluation shall be subject to the following:

(a) The LEA shall be given the opportunity to conduct a complete evaluation on the child prior to the request;

(b) Upon receiving the request the LEA shall, without unnecessary delay:

1. Initiate a due process hearing to show that its evaluation is appropriate; or

2. Ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria;

(c) The LEA may ask for the parent's reasons why he objects to the LEA's evaluation; however, the parent shall not be required to respond and the LEA shall not delay its action under paragraph (b) of this subsection while waiting for a response from a parent; and

(d) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation. Aside from these criteria, the LEA shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.

(e) A parent shall be entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parents disagree.

(4) If the LEA initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the LEA's evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(5) If the parent obtains an independent educational evaluation at public or private expense and it meets the agency criteria, results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child.

(6) If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

**Section 3. Notice to Parents [of Procedural Safeguards].** (1) An LEA shall provide written notice to the parents of a child with a disability a reasonable time before the LEA:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) This notice shall include:

(a) A description of the action proposed or refused by the LEA;

(b) An explanation of why the LEA proposes or refuses to take the action;

(c) A description of any other options that the LEA considered and the reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;

(e) A description of any other factors that are relevant to the LEA's proposal or refusal;

(f) A statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 C.F.R. 300.504, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and

(g) Sources for the parents to contact to obtain assistance in understanding the provisions of this section.

(3) The notice shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of this translation.

Section 4. Procedural Safeguards Notice. (1) [(4)] A copy of the procedural safeguards notice (e.g., parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:

- (a) Upon initial referral or parent request for evaluation;
- (b) Upon the receipt of the first state written complaint;
- (c) Upon the receipt of the first filing of a due process hearing in a school year;
- (d) In accordance with the discipline procedures in which a decision is made to remove a student that constitutes a change in placement because of a violation of the code of student conduct; and

- (e) Upon request by a parent;
- (2) [Upon invitation of each ARC meeting;
- (c) Upon reevaluation of the child; and
- (d) Upon receipt of a request for a due process hearing.

(5) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 C.F.R. section 300.504.

Section 5. [4-] Parental Consent (1) An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

(2) If the [a] parent of a child with a disability refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the LEA may pursue the initial evaluation by using the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing. However, the LEA shall still be considered to be in compliance with 707 KAR 1:300, Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation.

(3) If the child is in the custody of the state and is not residing with the child's parent, the LEA is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the child if:

- (a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);
- (b) The rights of the parent(s) have been terminated by a court of competent jurisdiction; or
- (c) The rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

(4) In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parent(s), the LEA shall keep a record of its attempts which may include:

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) If the parent of a child refuses to give consent for the provision of initial specially designed instruction and related services or fails to respond to a request for consent, the LEA shall not provide such services and shall not use a due process hearing or mediation procedures in order to obtain agreement or a ruling that the services may be provided to the child.

(6) The LEA shall obtain consent for reevaluation of a child with a disability. If the parent refused to consent, the LEA may pursue the reevaluation by using the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing.

(7) Parental consent for reevaluation shall not be required if the LEA can demonstrate that:

(a) It made reasonable efforts to obtain such consent and follows the procedures in Section 1(4) of this administrative regulation to show those efforts; and

(b) The parent failed to respond.

(8) Parental consent shall not be required before:

(a) Reviewing existing data as part of an evaluation or reevaluation; or

(b) Administering a test or other evaluation that is administered to all children unless consent is required of all parents before the administration of the test or evaluation.

(9) If the parent of a child fails to respond or refuses to consent to a request for evaluation, or to consent for services or refuses to consent for a reevaluation:

(a) The LEA shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the LEA decides not to pursue the consent through due process procedures set out in 707 KAR 1:340, Sections 9 and 11; and

(b) The LEA shall not be required to convene an ARC meeting or develop an IEP.

Section 6 Representation of Children. (1) If the child is a foster child and does not reside with the child's parents, the LEA shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The LEA shall not be required to obtain this consent if:

(a) The whereabouts of the parents cannot be determined after reasonable efforts have been made to do so;

(b) The rights of the parents have been terminated in accordance with state law; or

(c) The rights of the parents to make educational decisions have been subrogated by a court in accordance with state law and the consent for initial evaluation has been given by [to] someone appointed by the judge to represent the child.

(2) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party is qualified under 707 KAR 1:280(43) to act as parent, shall be presumed to be the parent for purposes of 707 KAR Chapter 1 unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons under 707 KAR 1:280(43)(a)-(d) to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(3) A LEA shall ensure the rights of a child are protected by determining an educational representative for the child. A LEA shall appoint a surrogate parent to make educational decisions for the child if:

(a) No parents as defined in 707 KAR 1:280 can be identified.

(b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents;

(c) The child is a ward of the state; or

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431 et. seq.

(4) The LEA must keep a record of the reasonable efforts it made to discover the whereabouts of the parents as listed in subsection (3)(b) of this section such as:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part B of IDEA, 34 C.F.R. Part 300, and 707 KAR Chapter 1, to make decisions about educational issues for a child.

(6) An LEA shall have a procedure for selecting surrogates:

(a) Shall not be an employee of the Kentucky Department of

Education, the LEA, or any other agency that is involved in the education or care of the child;

(b) Shall not have a personal or professional interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section above until a surrogate parent can be appointed that meets all the requirements of this section.

(9) An LEA shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the LEA that the child needs a surrogate.

(10) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(11) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. A LEA shall notify the child with a disability and the parents of the transfer of the rights.

Section 7. State Complaint Procedures. (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.660 through 300.662:

(a) A time limit of sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;

(b) An opportunity by the complainant and the LEA to submit additional information about any allegation in the complaint;

(c) An opportunity for the LEA to respond to the complaint including, at least:

1. A proposal to resolve the complaint; and

2. An opportunity for the parent who has filed the complaint and the LEA to voluntarily engage in mediation;

(d) A review of all relevant information; and

(e) A written decision addressing each allegation in the complaint containing the findings of fact and conclusions and the reasons for the final decision.

(2) Any organization or individual including someone from outside the state may file a signed written complaint under this administrative regulation.

(3) The complaint shall include:

(a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA administrative regulations;

(b) The facts on which the statement is based;

(c) A signature and contact information for the complainant;

(d) Name and residence of the child, or contact information if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431 et seq.;

(e) Name of the school the child is attending;

(f) A description of the nature of the problem, including facts related to the problem;

(g) A proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and

(h) Information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.

(4) The party filing the complaint shall forward a copy to the LEA.

(5) The complainant, parent, or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.

(6) The Kentucky Department of Education shall allow an extension of the time limit under subsection (1)(a) of this section only if exceptional circumstances exist or if the parent and the LEA

agree to extend the time line to engage in mediation or other alternative means of dispute resolution.

(7) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:

(a) Technical assistance activities;

(b) Negotiations; or

(c) Corrective actions. [for an initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by requesting a due process hearing or using the mediation procedures.

(3) Parental consent shall not be required for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain the consent, and the child's parent has failed to respond. To show the reasonable measures taken, the LEA shall keep documentation which may include:

(a) The records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Records of the visits made to the parent's home or place of employment and the results of those visits.

Section 8. [5-] Right to Mediation and Due Process Hearings.

(1) An LEA and parent of a child with a disability shall have the right to request mediation from the Kentucky Department of Education to resolve any disputes that may arise under 707 KAR Chapter 1.

(2) A parent or an LEA may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child or the refusal to initiate or change the identification, evaluation, or educational placement of the child.

(3) When a hearing is initiated, the LEA shall inform the parent of the availability of mediation to resolve the dispute.

(4) The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or LEA initiates a hearing.

Section 9. [6-] Mediation Rights. (1) The mediation process, if chosen, shall:

(a) Be voluntary;

(b) Not be used to deny or delay a parent's right to a due process hearing under Sections 5 and 7 of this administrative regulation or 34 C.F.R. 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and

(c) Be conducted by a qualified and impartial mediator trained in effective mediation techniques.

(2) The Kentucky Department of Education shall maintain a list of qualified mediators who shall:

(a) Not be an employee of the Kentucky Department of Education or the LEA that is involved in the education or care of the child;

1. Any LEA or state agency described in 34 C.F.R. section 300.104; or

2. Any part of the Kentucky Department of Education that is providing direct services to a child who is the subject of the mediation process;

(b) Be chosen at random for the mediation process; and

(c) Not have a personal or professional conflict of interest.

(3) The Kentucky Department of Education shall bear the cost of the mediation process.

(4) The sessions in the mediation process shall be:

(a) Scheduled in a timely manner not to exceed sixty (60) days; and

(b) Held at a location that is convenient to both parties to the dispute.

(5) In a mediation session in which a resolution is reached by the parties, a legally-binding written agreement shall be executed that:

(a) Sets forth the resolution and a timeline in which it shall be implemented;

(b) States that all discussions that occurred in the mediation process shall be confidential; and

(c) May not be used as evidence in any subsequent due process hearing or civil proceeding.

(6) Both the parent and a representative of the LEA who has the authority to bind the LEA shall sign the agreement. The agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

**Section 10. Dispute Resolution.** (1) Within fifteen (15) days of receiving notice of parental request for a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the LEA shall determine the relevant ARC members to attend the resolution session. A representative of the LEA who has decision-making authority on behalf of the LEA must also attend this meeting. An attorney for the LEA shall not attend the meeting unless an attorney accompanies the parent.

(2) The purpose of this meeting is:

(a) To allow the parents to discuss their due process hearing request;

(b) To discuss the facts that formed the basis of the request; and

(c) To give the LEA an opportunity to resolve the complaint.

(3) This meeting shall not take place if the parents and the LEA agree in writing to waive the meeting or agree to use the mediation process.

(4) If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is:

(a) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and

(b) Is enforceable in any state court of competent jurisdiction or a district court of the United States.

(5) The dispute resolution agreement may be voided by either party within three (3) business days of the agreement's execution.

(6) If the LEA has not resolved the complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process hearing request, the due process hearing may occur.

(7) The timeline for the resolution of the due process hearing shall begin at the expiration of the thirty (30) day timeline, except for adjustments allowed in subsections (11) and (12) [subsection (11)] of this section.

(8) The failure of the parent filing the due process hearing request to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held unless:

(a) The parties have jointly agreed to waive the resolution process or use mediation; or

(b) The LEA has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days of the receipt of the due process hearing request in which case the due process hearing may occur.

(9) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may request, at the conclusion of the thirty (30) day period, that a hearing officer dismiss the parent's due process hearing request.

(10) The LEA must keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of any visits made to the parent's home or place of employment and the results of those visits.

(11) If the LEA fails to hold the resolution meeting within fifteen (15) days of receiving the notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(12) The forty-five (45) day timeline for the due process hearing starts the day after one (1) of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or

(c) If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later the parent or the LEA withdraws from the mediation process.

**Section 11. [7-] Hearing Rights.** (1) The parent of a child with a disability or the attorney representing the child or the LEA filing the request for a hearing shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:

(a) The name of the child;

(b) The address of the residence of the child,

(c) The name of the school the child is attending;

(d) A description of the nature of the problem; and

(e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

(2) The Kentucky Department of Education shall provide a model form entitled "Request for a Due Process Hearing", containing these requirements to assist parents in filing a request a due process hearing.

(3) A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that contains the information listed in subsection (1) above. This notice shall be provided to the other party and to the Kentucky Department of Education. [The Kentucky Department of Education shall not deny or delay a parent's right to a due process hearing for failure to provide the notice in 707 KAR 1:340, Section 7(1) and (2).]

(4) The procedures included in KRS Chapter 13B and IDEA Subpart E shall apply to a due process hearing.

**Section 12. [8-] Appeal of Decision.** (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education a request for appeal, within thirty (30) calendar days of date of the hearing officer's decision.

(2) A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

(3) Except as provided in 707 KAR 1:340, Sections 14 and 15 [40 and 42], during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the child involved in the hearing or appeal shall remain in the child's [his] current educational placement, unless the LEA and the parent agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint involves an application for initial services for a child that is transitioning from the early intervention program into preschool and the child is no longer eligible for the early intervention program due to age. In that case the LEA shall not be required to provide the early intervention services the child had been receiving but would be required to provide any special education and related services that the child is eligible for and that are not in dispute between the parent and the LEA.

(4) If the hearing involves an application for initial admission to public school, and if there is consent of the parents, the child shall be placed in the public school until the proceedings are final.

**[Section 9. Representation of Children.** (1) An LEA shall ensure the rights of a child are protected by determining an educational representative for the child. An LEA shall appoint a surrogate parent to make educational decisions for the child if:

(a) No parents as defined in 707 KAR 1:280 can be identified;

(b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents; or

(c) The child is a ward of the state.

(2) An LEA shall have a procedure for determining whether a child needs a surrogate parent for assigning a surrogate parent to the child. The educational representative of the child shall have all the rights afforded parents under Part B of IDEA and 707 KAR Chapter 1 to make decisions about educational issues for a child and to give written informed consent when necessary under admin-



istrative regulation-

(3) An LEA shall have a procedure for selecting surrogates. A surrogate-

(a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;

(b) Shall not have an interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(4) A surrogate parent may be an employee of a private agency that provides noneducational care for the child if that person meets the standards in this section. A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(5) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(6) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. A LEA shall notify the child with a disability and the parents of the transfer of the rights-

Section 13. [40:] Discipline Procedures. (1) The ARC may consider any circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(2) School personnel may remove a student with a disability who violates a code of student conduct from the student's placement to an appropriate interim alternative education setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities).

(3) School personnel may remove a student with a disability from the student's current placement for additional periods of time of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change in placement because of disciplinary removals.

(4) If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability (as described in Section 14 of this administrative regulation), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities for removals that would exceed ten (10) consecutive school days.

(5) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described in subsection (6) (a) and (b) below shall be provided during any subsequent days of removal.

(6) A child with a disability that is removed from child's current placement for more than ten (10) consecutive school days shall:

(a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications, that are designed to address the behavior violation so that it does not recur.

(7) The services described in subsection (6) of this section may be provided in an interim alternative educational setting.

(8) A LEA shall be required to provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.

(9) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement be-

cause of disciplinary removals, school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which educational services explained in subsection (6) of this section are needed.

(10) If a removal is a change in placement because of disciplinary removals, the child's ARC shall convene within ten (10) school days after the change of placement is made and shall determine the appropriate educational services for the child. If the student has been placed in an interim alternative educational setting, the LEA shall invite staff from that alternative setting to the ARC meeting.

Section 14. Manifestation Determination (1) Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the relevant members of the child's ARC, as determined by the LEA and the parent, must convene a meeting to review all relevant information in the student's file, including the child's IEP, any teacher observations, teacher-collected data, and any relevant information provided by the parents to determine

(a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either condition in subsection (1)(a) or (b) of this section was met.

(3) If the ARC determines that the condition described in subsection (1)(b) of this section was met, the LEA shall take immediate steps to remedy those deficiencies.

(4) If the ARC determines that the conduct was a manifestation of the child's disability, the ARC shall:

(a) Conduct a functional behavioral assessment, unless:

(i) The LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or

(ii) Review the behavioral intervention plan, (if one had already been developed) and modify it, as necessary, to address the behavior; and

(b) Return the child to the placement from which the child was removed unless the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in subsection (5) of this section.

(5) School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child's disability if the child:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA.

(6) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA shall notify the parents of the decision and provide the parents with a copy of the procedural safeguards as contained in Section 4 of this administrative regulation.

(7) The ARC of the child shall determine the interim alternative educational setting and the services for any child removed under Sections 13(4), (10) and 14(5).

Section 15. Appeals from Placement Decisions (1) The parent of a child with a disability who disagrees with any decision regarding placement under Section 13 or 14 or the manifestation determination, or a LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the



child or to others may request a hearing by filing using the procedures contained in Sections 8 and 11.

(2) A hearing officer shall hear and make a determination regarding an appeal requested in subsection (1) of this section.

(3) In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may:

(a) Return the child to the placement from which the child was removed; or

(b) Order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others.

(4) When an appeal under this section has been requested, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time provided for in subsection (3)(b) of this section, whichever occurs first, unless the parent and the LEA agree otherwise.

(5) An appeal under this section shall:

(a) Be conducted in an expedited manner;

(b) Shall occur within twenty (20) school days from the date the request is filed; and

(c) Shall result in a determination within ten (10) school days after the hearing.

If the child with a disability is removed for more than ten (10) school days during a school year, a change of placement shall be considered to have occurred for purposes of disciplinary actions.

(2) To the extent removal would be applied to children without disabilities, school personnel may remove a child with a disability from the child's current placement for not more than a total of ten (10) school days for a violation of school rules.

(3) A child's ARC may order a change in placement of a child with a disability to an appropriate interim educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days, if:

(a) The child carries or possesses a weapon to or at school, a school function, or school premises; or

(b) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. An illegal drug shall not include a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under the authority of any other provision of the Controlled Substances Act, 21 U.S.C. section 812(c) or under any other provision of federal law.

(4) No later than ten (10) business days after commencing an action that results in a change of placement, the LEA shall convene an ARC to:

(a) Develop a plan for conducting a functional behavior assessment, if an assessment has not been conducted;

(b) Develop and implement a behavioral intervention plan if a functional behavioral assessment has already been conducted; or

(c) Review and modify the assessment and the plan, as necessary, to address the behavior if a functional behavioral assessment has been conducted and a behavioral intervention plan has been developed.

(5) As soon as practicable after developing the functional behavioral assessment described in subsection (4)(a) of this section, and completing the assessments required by the plan, the LEA shall convene an ARC to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

(6) A due process hearing officer may order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing:

(a) Determines that the LEA has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines the interim alternative educational setting that is proposed by the school personnel who have consulted with the child's special education teacher, meets the requirements contained in subsection (7) of this section.

(7) An interim alternative educational setting in which a child is placed shall:

(a) Enable the child to continue to progress in the general curriculum;

(b) Enable the child to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and

(c) Include services and modifications to address the behavior to prevent the behavior from recurring.

Section 11. Manifestation Determination Review. (1) If an action is contemplated that will result in a change of placement for a child with a disability who has engaged in behavior that violated any rule or code of conduct of the LEA that applies to all children:

(a) Not later than the date on which the decision to take action is made, the parents shall be notified of the decision and provided with a copy of procedural safeguards; and

(b) Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, a review by the ARC and other qualified personnel shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(2) In conducting the review, the ARC may determine that the behavior of the child was not a manifestation of the child's disability if:

(a) The ARC first considers, in terms of the behavior subject to the disciplinary action, all relevant information including evaluation and diagnostic results, relevant information supplied by the parents, observation of the child and the child's IEP and placement;

(b) After the review of this information, the child's IEP and placement are reviewed in relationship to the behavior subject to the disciplinary action to determine if the IEP and placement were appropriate and the specially designed instruction and related services, supplementary aids and services and the behavior intervention strategies were provided consistent with the child's IEP and placement; and

(c) The ARC determines if the child's disability impaired the ability of the child to understand the impact and consequences of the behavior and if the child's disability impaired the ability of the child to control the behavior.

(3) If the ARC determines that any of the standards in subsection (2) of this section were not met, the behavior shall be considered a manifestation of the child's disability.

(4) If the ARC identifies any deficiencies in the child's IEP or placement or in its implementation, the LEA shall take immediate steps to remedy those deficiencies.

(5) If after the manifestation determination review, the ARC determines the behavior was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to all children may be applied to the child in the same manner in which they would be applied to children without disabilities.

(6) If the LEA initiates disciplinary procedures applicable to all children, it shall ensure that all special education and disciplinary records are transmitted to the school personnel making the final determination regarding the disciplinary actions as to the child with disabilities.

(7) A parent may request a due process hearing to contest the decision reached in a manifestation determination review or with any decision regarding placement under this section. The hearing shall be arranged in an expedited manner.

Section 12. Challenges to Placement in an Interim Alternative Educational Setting and Manifestation Determination. (1) If a parent requests a hearing to challenge the placement of his child in an interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting until the decision is final or until the expiration of the time period for the placement, whichever occurs first, unless the parent and the LEA agree otherwise.

(2) If a child is placed in an interim alternative educational setting

and school personnel propose to change the child's placement after expiration of the time period, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (i.e., the child's placement prior to the interim alternative educational setting) unless the school personnel maintain that it is dangerous for the child to be in the current placement, in which case the LEA may request an expedited due process hearing.

(3) A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a rule or code of conduct of the LEA, may assert any of the protections provided for in this administrative regulation if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

Section 16. [13.] Basis of Knowledge. (1) An LEA shall be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA or to the teacher of the child, that the child is in need of special education and related services;

(b) [The behavior or performance of the child demonstrates the need for these services, in accordance with 707 KAR 1:280;

(c)] The parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or

(d) [The teacher of the child, or other personnel of the LEA, has expressed concern about a pattern of [the] behavior or performance of the child directly to the director of special education or [to] other supervisory personnel of the LEA [in accordance with the LEA's child find or special education referral system].

(2) An LEA shall not be deemed to have knowledge that a child may be a child with a disability if, as a result of receiving information, the LEA:

(a) Conducted an evaluation and determined the child was not a child with a disability;

(b) [or] Determined an evaluation was not necessary and provided notice to the parents of these determinations; or

(c) Parents refused to consent to an evaluation or refused initial services.

(3) If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities.

(4) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

Section 17. [14.] Reporting to Law Enforcement Agencies. (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.

(2) If an LEA reports a crime committed by a child with a disability, it shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g.

[Section 15. State Complaint Procedures (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.660 through 300.662.

(a) A time limit of sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;

(b) An opportunity by the complainant and the LEA to submit additional information about any allegation in the complaint;

(c) A review of all relevant information; and

(d) A written decision addressing each allegation in the complaint containing the findings of fact and conclusions of the reasons for the final decision.

(2) Any organization or individual including someone from outside the state may file a signed written complaint under this administrative regulation.

(3) The complaint shall include:

(a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA regulations;

(b) The facts on which the statement is based; and

(c) Information indicating that the violation did not occur more than one (1) year prior to the date of the filing of the complaint, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three (3) years prior to the date of the complaint.

(4) The complainant, parent or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.

(5) The Kentucky Department of Education shall allow an extension of time limit under subsection (1)(a) of this section only if exceptional circumstances exist.

(6) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:

(a) Technical assistance activities;

(b) Negotiations; or

(c) Corrective actions.

Section 18. [16.] Incorporation by Reference. (1) The "Request for a Due Process Hearing" dated February 2007 [July 14, 2000], is [hereby] incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, [and copied] at the Division of Exceptional Children Services, Department of Education, Capital Plaza Tower, 500 Mero Street, Eighth Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner of Education

KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: June 14, 2007 at 11 a.m.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedural safeguards for children with disabilities and their parents and includes dispute resolution mechanisms.

(b) The necessity of this administrative regulation: The provision on procedural rights is a key IDEA section since federal law affords numerous rights to parents and their children with disabilities.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the requirements of IDEA, 20 U.S.C. 1400-1419, 34 C.F.R. 300.662

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: There are numerous amendments required by federal law in this area. By amending the regulations, parents and districts will have notice of the procedural requirements of Federal law which will effectuate the administration of the new 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: Changes in the dispute resolution processes for filing complaints, hearings and mediation requests were made in the existing regulation. Stronger parental notice provisions by districts and changes to the appointment of surrogate parents were added.

A provision was added, eliminating an onerous district requirement to provide parents with procedural safeguard notices numerous times throughout the school year. Clarification on consent for evaluations and reevaluations in specific instances were added. Most importantly, major changes regarding the discipline of students with disabilities were added to this section, including new federal provisions on manifestation determinations for disciplinary changes of placement.

(b) The necessity of the amendment to this administrative regulation: New federal provisions on consent, evaluation, parent rights and surrogate parents were added. Discipline procedures were simplified which will assist districts in following the law.

(c) How the amendment conforms to the content of the authorizing statute. This amendment includes federal content under IDEA in the areas specified in 2(a).

(d) How the amendment will assist in the effective administration of the statutes: By simplifying the discipline procedures for school districts, school districts and KDE will better able to administer the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, superintendents, principals, teachers, and parents and their children with disabilities, as well as supporting staff in the Kentucky Department of Education.

(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 an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will be required to amend their policies and procedures in the area of special education. Professional development and technical assistance, especially in the area of discipline, will be needed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Simplification of IDEA discipline procedures are a benefit to local districts and school administrators. The previous law was more complicated and was difficult for all parties to understand.

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

(a) Initially: The proposed amendment does not result in additional costs.

(b) On a continuing basis: The proposed amendment does not result in additional costs, as needed technical assistance can be delivered through existing mechanisms.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal monies allocated under Individuals with Disabilities Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The IDEA federal funding as mentioned above is expected to assist with the cost 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public and elementary schools.

#### 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? School Districts

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

regulation. "Individuals with Disabilities Act", 20 U.S.C. § 1400-1419, 34 C.F.R. 300.662

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 meets the federal regulatory requirements for the school district to receive the monies allocation by the Individuals with Disabilities Education Act.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of monies allocated to each district is based on a formula using the district specific data such as, poverty index, numbers of students meeting eligibility guidelines, etc.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of funds vary based on the total allocated to the U.S. Department of Education from Congress.

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The Individuals with Disabilities Act allocates funds to states to provide for some of the excess costs associated with the education of students with disabilities. This amount varies for both the state and the school districts depending on the total amount awarded by Congress to the Office of Special Education Programs in the U.S. Department of Education. Additionally, the district allocation varies depending on the count of eligible students and other factors specific to each school district.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. "Individuals with Disabilities Act", 20 U.S.C. § 1400-1419, 34 C.F.R. 300.662

2. State compliance standards. KRS 157.200-290

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable

#### ENVIRONMENTAL AND PUBLIC PROTECTION

Department of Public Protection  
Office of Charitable Gaming  
(Amended After Comments)

820 KAR 1:025. Financial [Quarterly] reports of a licensed charitable organization.

RELATES TO: KRS 238.550(7), (8)(5), 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550(7), (8)(5).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.550(7), (8) require (5) requires a licensed charitable organization to submit financial [quarterly] reports. KRS 238.570(1) requires a licensed charitable organization to remit a percentage [0.53-of-one (1)-percent] of the gross receipts derived from charitable gaming to the office. This administrative regulation establishes the method and time of filing the financial [quarterly] reports and

remitting payment of the [quarterly] fees due.

Section 1. Quarterly Reporting Period Defined. (1) For licensed charitable organizations that have gross receipts of \$200,000 or less per calendar year and do not have a weekly bingo session, a complete, accurate, legible, and verifiable financial report, in accordance with Section 2 of this administrative regulation, shall be submitted by each licensed charitable organization along with the appropriate fee for every year licensed to game on or before January 31st.

(2) For all other licensed charitable organizations, [(a)] a complete, accurate, legible, and verifiable financial [quarterly] report, in accordance with Section 2 of this administrative regulation, shall be submitted by each licensed charitable organization along with the appropriate fee for every quarter licensed to game on or before the following dates:

(a) [(1-)] April 30, for the quarter January 1 to March 31;

(b) [(2-)] July 31, for the quarter April 1 to June 30;

(c) [(3-)] October 31, for the quarter July 1 to September 30; and

(d) [(4-)] January 31, for the quarter October 1 to December 31.

(3) [(b)] If the due date is on a Saturday, Sunday or legal holiday, the report shall be due on the first business day thereafter.

(4) The financial [(2)-A quarterly] report and fee shall be considered filed when due if it has been:

(a) Mailed to the office by first class mail, postage prepaid, to the correct address and postmarked by the due date; or

(b) Received in the office by hand-delivery on or before the due date.

Section 2. Financial [Quarterly] Reports. (1) A financial [quarterly] report shall:

(a) Be submitted on Form CG-FIN [CG-QR], "Licensed Charitable Organization Financial [Quarterly] Report", including all attachments.

(b) ~~Be submitted for each quarter that the organization is licensed to game;~~

(c) Be completed in ink or typed;

(d) ~~[(d)] Include the original signature and printed name of either the chief executive officer or the chief financial officer of the licensed charitable organization; and~~

(e) ~~[(e)] Include the original signature and printed name of the preparer if prepared by an individual other than the chief executive officer or chief financial officer.~~

(2) If an organization does not have any information to place on an attachment to the financial [quarterly] report, it shall indicate "not applicable" on the attachment.

(3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN [CG-QR], the product description shall be listed in the format "# ON # UP", with:

(a) The number "ON" being the number of bingo faces on a bingo paper sheet; and

(b) The number "UP" being the number of bingo paper sheets contained in a bingo paper pack.

(4) If multiple pages are used for inventory, then the persons completing the inventory shall sign one (1) page of the pages they completed and initial the remaining pages.

Section 3. Fees Due. The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the financial [quarterly] report is due.

Section 4. Reporting Expenses All expenses incurred by a licensee shall be reported on the financial [quarterly] report for the date on [quarter-in] which payment was made, (either the date a check was written or an electronic funds transfer was made) regardless of when the supplies were used or the services were rendered.

Section 5. Incorporation by Reference. (1) Form CG-FIN [CG-QR], "Licensed Charitable Organization Financial [Quarterly] Report, (05/07) [(04/07)](2/06)", is incorporated by reference.

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

Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

TONY S. ROYALTY, Executive Director

TIMOTHY LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: June 7, 2007

FILED WITH LRC: June 8, 2007 at 4 p.m.

CONTACT PERSON. Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Chantable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the procedure for the filing of the financial reports of the licensed charitable organizations

(b) The necessity of this administrative regulation:

This administrative regulation is needed so that the agency can receive the reports correctly and in a timely fashion.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.550(6-8) requires that the organizations report concerning their charitable gaming activity

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is needed so that the Office can enforce the statute requiring the organizations to report regarding their receipts.

(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 conforms the regulation to the statutory change allowing yearly financial reports. Also, the financial reports filed by each licensee need to be simplified, and changed to contain additional information needed by the Office to determine compliance with reporting, retention of proceeds, and use of funds for a charitable purpose. The report was updated to conform to the new statute

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to conform to the statutory change, simply the financial report, and allow the Office to capture more information so that it can monitor the charitable gaming activities of the organizations to determine if they are in compliance.

(c) How the amendment conforms to the content of the authorizing statutes: It is required so that the agency can enforce KRS 238.550(6-8).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it simplifies the financial report reporting form and allows the agency to capture more information.

(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 700 charitable organizations.

(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 regulation entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The organizations will have to obtain the new regulation and the financial report and become familiar with it.

(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): It will be easier and quicker to apply to complete the financial report and approximately 300 organizations will only have to file 1 report a year instead of 4.

(5) Provide an estimate of how much it will cost to implement this 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? Charitable gaming is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering was applied because the financial reporting requirements are different based on the gross receipts of an organization.

#### 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

Department of Public Protection  
Office of Charitable Gaming  
(Amended After Comments)

#### 820 KAR 1:032. Pulltab construction.

RELATES TO: KRS 238.505(5), 238.545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the office to establish standards for pulltab construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of pulltabs.

Section 1. Conformity of Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those pulltabs conforming to the requirements of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only those pulltabs conforming to the requirements of this administrative regulation.

trative regulation.

Section 2. Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numeral jar tickets with colored winning numerals shall not be required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue shall be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window slits on each break open ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) Except as provided in subsection (10) or (11) of this section, the minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more shall be:

(a) The name of the manufacturer, or its distinctive logo;

(b) The name of the game;

(c) The manufacturer's form number;

(d) The price per individual pulltab;

(e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection 9(a), (b), (c), (d), and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(f) of this section.

(11) A pulltab with an overall area of less than one and six tenths (1.6) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection (9)(a) and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(b), (c), (d), or (f) of this section.

Section 3. Randomization. Winning pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be

assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly distributed throughout the deal. Banded tickets packaged in bags, rather than boxes, shall be subject to these requirements.

**Section 4. Packaging and Distribution.** (1)(a) Each deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed to guarantee that, if the container is opened or otherwise tampered with, evidence of the opening or tampering will be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box, or other container is received by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall be completely sealed by the application of heat or adhesive [heat-sealed]. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box, or other container; or

(b) On the inside of the deal's package, box, or other container if it is clearly visible from the outside of the package, box, or other container.

(3) Manufacturers shall print on or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public."

(4) Manufacturers shall include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number, and the game serial number. The bar code label shall be visible from the outside of the package, box, or other container.

**Section 5. Flares and Seal Cards.** (1) Every deal of pulltabs shall contain a flare or a seal card that has printed on it, by the manufacturer, the following information:

- (a) The name of the game;
- (b) The manufacturer's name or logo;
- (c) The manufacturer's form number;
- (d) The game serial number;
- (e) The ticket count;

(f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and

- (g) The cost per play; and

(2) Every deal of pulltabs shall contain instructions on how to play the game.

**Section 6. Cumulative Games, and Carryover or Progressive Games.** (1) The amount dedicated to the cumulative prize pool, or the carryover or progressive jackpot, shall be predetermined by the manufacturer and built into the payout structure for the game. The dedicated amount shall be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game.

(2) All games contributing to the cumulative prize pool, or the carryover or progressive jackpot, shall be of the same form number.

(3) The flare or seal card for the carryover or progressive jackpot shall contain an area in which the current amount of the carryover or progressive jackpot can be posted.

(4) If a carryover or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

**Section 7. Event Games.** (1) An event game shall not contain a "last sale" feature.

(2) The number of winners and the prize amounts shall be built into the payout structure for the game by the manufacturer.

(3) An event ticket prize shall not exceed the individual ticket prize limit for a pulltab game.

(4) The prize for an event pulltab game shall not be considered a bingo prize.

(5) If a carryover or progressive pulltab game uses a jackpot prize card that is separate from the jackpot seal card, then each deal of the game must possess both a seal card and a jackpot prize card that has the serial number of the deal affixed to it by the manufacturer.

(6) In a carryover or progressive pulltab game the organization may start a new jackpot card with each deal or use the original jackpot card until won. The organization shall maintain each jackpot card used pursuant to 820 KAR 1.036, Section 2(15).

(7) No progressive pulltab game shall be designed by the manufacturer that gives any player odds greater than a fifty (50) percent chance to win the progressive jackpot.

**Section 8. Multipackaged Pulltab Deals.** Every package shall be played for the deal to show the stated profit. Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

**Section 9. Tracking by Manufacturer.** Every manufacturer of pulltabs shall maintain records sufficient to track each deal of pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

**Section 10. Tracking by Distributor.** (1) Every distributor of pulltabs shall maintain records sufficient to track each deal of pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

(2) For sales in the Commonwealth of Kentucky, or to residents of Kentucky, the records required under this section shall be deemed sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale.

(3) For sales outside the Commonwealth of Kentucky to non-residents of Kentucky, the records required under this section shall be deemed sufficient if the distributor makes and retains a copy of a state charitable gaming license or a valid state identification card of the purchaser which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.

**Section 11. Requirements of Distributor Invoice.** (1) Distributors selling pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

- (a) The purchaser's name, address, and license number;
- (b) The address to which the shipment was delivered;
- (c) The date of sale or credit;
- (d) The conditions of the sale or credit;
- (e) The quantity of pulltabs sold including the number of the deals, the name of each deal, the tickets per deal, and the serial number and form number of the deal;
- (f) The total invoice amount;
- (g) The name of the person who ordered the supplies;
- (h) The name of the person making the delivery;
- (i) The date of delivery or date item was picked up for sale or credit;
- (j) The place or manner of delivery; and
- (k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver pulltabs to an agreed place or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an



invoice shall be made in writing to the distributor and a copy shall be sent to the office.

**Section 12. Defects.** (1) If a defect in packaging or construction of a pulltab is discovered by an organization, the defect ~~the defective items~~ shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect, or replace the defective items, within a reasonable time, if possible.

(2) If the office, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the office shall, with respect to pulltabs for use in Kentucky, require the manufacturer to:

(a) Recall the pulltabs affected that have not been sold at retail to licensed organizations; or

(b) Issue a total recall of all affected deals.

(3) In choosing and directing a particular recall in accordance with subsection (2) of this section, the office shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable organization;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(4) In consultation with the manufacturer, the office shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

TONY S. ROYALTY, Executive Director

TIMOTHY LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: June 7, 2007

FILED WITH LRC: June 8, 2007 at 4 p.m.

CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the requirements for the manufacturers and distributors regarding the construction of pulltabs.

(b) The necessity of this administrative regulation: This administrative regulation is needed so that the requirements for constructing pulltabs are more easily understood by the regulated community.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the Office will establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for the construction and distribution of pulltabs.

(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 construction standards are being amended to better clarify the manufacture and play of progressive games. The regulation was amended after comments to make small changes in wording and grammar and to allow pulltab deals to be completely

sealed by heat or adhesive.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed so clarify the confusion that currently exists between cumulative and progressive pulltab games.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute because it assists the manufacturers in complying with the statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it makes the requirements easier to understand for the regulated community.

(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 30 manufacturers.

(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 regulation entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment conforms the regulation to most industry standards. If the manufacturers have to make any changes, it will be minimal.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and regulations.

(5) Provide an estimate of how much it will cost to implement this 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? Charitable gaming is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all manufacturers.

## 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**  
**Department of Public Protection**  
**Office of Charitable Gaming**  
**(Amended After Comments)**

**820 KAR 1:036. Pulltab rules of play.**

RELATES TO: KRS 238.505(5), 238.545(1), (2)  
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1),

(2) **NECESSITY, FUNCTION, AND CONFORMITY.** KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the office to establish standards for pulltab rules of play. This administrative regulation establishes standards for the play of pulltabs.

**Section 1. General Provisions.** (1) All individuals involved in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The chairperson shall be in full charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall also be locked and access shall be controlled.

(5) Except for a charity fundraising event, a volunteer at any other charitable gaming occasion at which pulltabs are sold shall not purchase or play pulltabs at that occasion. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer did not work, and from a deal the volunteer did not sell.

(6) [House rules.] If the charitable organization has house rules concerning its gaming occasion, the house rules shall:

(a) 1. Be posted in at least two (2) conspicuous locations at the gaming occasion and announced prior to the commencement of the gaming occasion; or

2. Be listed on the program;

(b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;

(c) Be followed; and

(d) Include the organization's name and license number.

(7) An organization shall perform an inventory and obtain permission of the office before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof.

(8) When an organization ceases to game, it [they] shall perform a final inventory and return all unused product to a distributor, donate the product to another organization with the permission of the office, or destroy the product with the permission of the office. Abandoned product shall be seized by the office and destroyed.

**Section 2. Playing.** (1) The flare or seal card, including a progressive jackpot card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Pulltabs shall not be sold to the public from the original packing box or container. Pulltabs shall be removed from the original box or container and mixed together prior to sale.

(3) If a deal of pulltabs is packed in more than [that] one (1) box or container, an individual container shall not designate a winner or contain a disproportionate number of winning or losing tick-

ets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the manufacturer to be played in subsets. Those subsets may be placed out for play in succession.

(4) Pulltabs which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner which tends to deceive the public, or affect the chances of winning or losing, shall not be placed into play. The organization shall notify the Office of Charitable Gaming of the existence of these tickets in writing within fifteen (15) days

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal matches [match] the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal do not match the serial number on the flare or seal card accompanying the deal, the organization shall not place the deal into play and shall notify that distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the office in writing.

(6) Any licensed charitable organization which sells pulltabs from its office location or from a pulltab dispenser shall comply with 820 KAR Chapter 1 regarding the play, proper recordkeeping, and reporting of those sales. The sales shall be reported on the financial [quarterly] report.

(7)(a) If a deal is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal closed or completed, declare the winners, and post winning numbers for fifteen (15) days with information directing the method of claiming a prize at its office location. All unsold pulltabs shall be retained as required in subsection (15) [(14)] of this section.

(c) If no winning pulltabs remain in the deal, the licensed charitable organization shall consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs as required in subsection (14) of this section.

(d) A licensed charitable organization shall not complete play of a deal or a seal card it did not initiate.

(8) A pulltab shall not be sold to the public at a price different than that printed by the manufacturer of the pulltab upon the flare or seal card which accompanies the deal.

(9) Only authorized representatives of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) If playing pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal of tickets as designed by the manufacturer. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the flare or seal card the prize structure to be awarded before placing the deal into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid no later than five (5) days from the date of redemption.

(14) All winning pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15)(a) The charitable organization shall retain, for a period of twelve (12) months, to allow auditing by the staff of the office:

1. All winning pulltabs with a prize value of fifty (50) dollars and

above;

2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;

3. All seal cards with a prize value of fifty (50) dollars and above;

4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and

5. All unsold pulltabs.

(b) ~~These records may be maintained at the gaming location.~~

(c) The pulltabs, flares, prize boards in cumulative games, and seal cards shall be disposed of by burning in compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, or seal card or any portion thereof.

(16) The fair market value of bingo paper, a card-minding device, or each pulltab given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, or pulltab at that gaming occasion.

(17)(a) If a bingo paper is awarded [given-away] as a [promotional item or a] merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of bingo paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its session records.

(18)(a) If a card-minding device is given away as a [promotional item or a] merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device.

(d) The organization shall retain the voucher with its session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher involving a card-minding device.

(19)(a) If a pulltab is given away as a promotional item or a door prize, the amount and description of the pulltab given away shall be listed on the gaming occasion program [patron shall be given a voucher].

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The name, serial number, form number, and amount of the pulltab given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the pulltab.

(d) ~~The organization shall retain the voucher with its session records.~~

(20)(a) If a pulltab is awarded [given-away] as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs from the pulltab manager by transfer of cash from bingo payout to pulltab sales and it shall be recorded as a sale on the session [complete a voucher].

(b) The voucher shall include:

1. The name and serial number of the pulltab game and the number of pulltabs awarded; and

2. The printed name and signature of the person in charge of bingo payouts.

(c) ~~The organization shall retain the voucher with its pulltab receipt records.~~

(21) Vouchers shall be redeemed on the same day as awarded.

Section 3. Jar Tickets. Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

Section 4. Seal Card Games. (1) The organization shall post the seal card for the deal in play at the location of the seal game while the deal is in play.

(2) If a deal with a seal card is not completed during a gaming occasion, the organization shall require the patrons with holders to sign the seal card and provide a means of contacting them when the winner is declared.

(3)(a) The seal for the deal shall be broken or torn open in plain view of all persons present when:

1. All tickets from a deal have been sold;

2. All the winning tickets from a deal have been sold;

3. All the lines on the sign-up card have been filled; [or]

4. The deal has been closed, because no future date is anticipated; or

5. As instructed by the game as designed by the manufacturer.

(b) Each winning combination, [the specific form number,] the name of the game, and the serial number of the deal shall be announced and posted at the location of the game.

(c) The date the seal tab was opened shall be recorded on the seal card.

Section 5. "Last Sale" Pulltabs. "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 6. Seal Card Games with Carry Over or Progressive Prizes. (1) The prize pool for a progressive pulltab game shall be established only through the play of deals of the same game which bear a manufacturer's form number identical to the form number of any previously-played deals contributing to the prize pool.

(2) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets may not match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one (1) deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until the progressive jackpot prize is determined. If the game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day ~~its [their]~~ office is open.

(4) The seal card for each deal in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(5) Every seal card for each deal that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot card, shall be displayed at all times while the game is in play, until the progressive jackpot prize is won.

(6) The serial numbers for each deal contributing to a carryover or progressive jackpot prize shall be recorded in the gaming occasion records.

(7) A progressive or carryover pulltab game shall be played in accord with the manufacturer's specifications for the determination of a winner.

(8) As long as money remains in the jackpot prize pool, the organization shall continue to play the same games with the same form number.

(9) If a game bearing the same manufacturer's form number is no longer available, the organization shall contact the office for instructions on how to proceed

(10)(a) If a progressive prize remains unpaid, a licensed chari-

table organization shall display, in full and complete view of the players and at all times either:

1. The jackpot card being played and each seal card contributing to the jackpot prize pool; or

2. A legible poster identifying by name, serial number, and form number each deal of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) calendar days after the organization awards the prize.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) calendar days after the date the organization considers the game closed and retains the prize as its property.

(d) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times the current value of the jackpot.

(11) An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number and form number on the winning ticket match [match(es)] the serial number and form number on a seal card from a deal of tickets which contributed to the jackpot prize.

(12) For jackpot prizes of \$250 or over, the [An] organization shall attach a copy of the valid state identification card which contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

(13) The jackpot prize in a progressive game may accrue in excess of \$2,400 dollars. An individual jackpot prize shall not be paid in excess of \$2,400. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot carried forward to the next session at each gaming occasion shall be recorded in the gaming occasion record.

(14) Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool as long as it also includes the statement that the individual payout shall not exceed \$2,400.

(15) A licensed charitable organization shall report to the office concerning its play of seal card games with a progressive prize on the financial [quarterly] report.

(16) The jackpot prize pool in a progressive game shall be considered an adjusted gross receipt that shall be deposited within two (2) business days of the gaming occasion.

**Section 7. Seal Card Games with Cumulative Prizes** (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals of the same game which bear a manufacturer's form number identical to the form number of any previously played deals contributing to the prize pool.

(2) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall remain in play continuously until the cumulative prize pool has been awarded. If such game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day their office is open.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's predesignated prize structure for the game.

(5) The seal card for each deal in a cumulative pulltab game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the cumulative prize pool.

(6) Every seal card for each deal that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed at all times while the game is in play, until the cumulative prize pool is awarded.

(7) The serial numbers for each deal contributing to a cumulative prize pool shall be recorded in the gaming occasion records.

(8) An organization shall not award the cumulative prize pool unless the serial number on the winning ticket matches the serial

number on a seal card from a deal of tickets which contributed to the cumulative prize board.

(9) A cumulative prize board shall not contain prizes totaling in excess of \$2,400.

(10) A licensed charitable organization shall report to the Office concerning its play of seal card games of cumulative games on the financial [quarterly] report.

TONY S. ROYALTY, Executive Director

TIMOTHY LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary

APPROVED BY AGENCY: June 7, 2007

FILED WITH LRC: June 8, 2007 at 4 p.m.

CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the rules of play for pulltabs.

(b) The necessity of this administrative regulation: This regulation is needed to establish the rules of play for pulltabs.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the Office will establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for playing pulltabs.

(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 clarifies the rules for the play of progressive and cumulative games.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to avoid the confusion in the community regarding the play of these games. The regulation was amended after comments to make small changes regarding punctuation and grammar.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute because it explains how to correctly play pulltabs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it makes the requirements easier to understand for the regulated community.

(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 700 organizations.

(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 regulation entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The organizations will have to obtain the new regulation.

(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): They will be able to play these types of games with a better understanding.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implement-

tation and enforcement of this administrative regulation? Charitable gaming is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all organizations.

#### 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:

#### ENVIRONMENT AND PUBLIC PROTECTION CABINET

Department Of Public Protection

Office Of Charitable Gaming

(Amended After Comments)

#### 820 KAR 1:046. Bingo rules of play.

RELATES TO: KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the office to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the office to establish charitable gaming standards. KRS 238.545(1)(b) requires the office to promulgate an administrative regulation concerning use and control of card-minding devices. This administrative regulation establishes standards for the conduct of play of bingo.

Section 1. General Provisions. (1) All individuals involved in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson shall be in full charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) Except for Braille cards intended for use by blind players, bingo paper or card minding devices shall not be reserved by the charitable organization for any player. Legally-blind players may use their own cards if the licensee does not make Braille cards available. In accordance with KRS 238.505(15), Braille cards shall

not be considered gaming supplies and equipment and may be purchased from ordinary sources of supply.

(4) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization except for licensed charity fundraising events.

(5) If a bingo session is cancelled once it is commenced, an organization may refund a portion of the purchase price of the bingo paper or card-minding device. An organization shall not continue the session or award the prizes at a later date.

(6) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall be locked and access shall be controlled. An extra set of bingo balls shall not be stored at the caller's stand but shall be stored with the other charitable gaming supplies.

(7) A volunteer at a charitable gaming occasion at which bingo cards or faces are sold shall not purchase or play bingo cards or faces at that occasion unless the volunteer's duties are complete for the occasion. Once a volunteer starts playing bingo, that person shall not volunteer for the remainder of that gaming occasion.

(8) [House rules.] If the charitable organization has house rules concerning its bingo session, the house rules shall:

(a)1. Be posted in at least two (2) conspicuous locations at the gaming occasion and announced prior to the commencement of the gaming occasion; or

2. Be listed on the program;

(b) ~~Be kept with the organization's session records;~~

(c) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;

(d) ~~[(d)]~~ Be followed; and

(e) ~~[(e)]~~ Include the organization's name and license number.

(9) Every ball in the bingo machine or other selection device shall be placed out for verification at the commencement and at the completion of each bingo session.

(10) Individual bingo paper sheets in a pack shall not be sold as individual bingo paper sheets.

(11) The organization shall buy a complete set of paper and use that paper before starting another set.

(12) A charitable organization shall not separate faces on one (1) paper sheet or any paper sheets in a pack prior to play.

(13) The price for each type of bingo sheet, pack, or package shall be listed on the bingo program.

(14) Bingo paper sheets, bingo paper packs, and bingo paper packages shall be used during the bingo session for which they were purchased. An organization shall not allow a player to carry over purchased, but unused, bingo paper sheets, bingo paper sheet packs, or bingo paper packages to a subsequent bingo session.

(15) An organization shall not allow a player to play bingo paper that was not purchased at that session, except for Braille cards as provided in subsection (3) of this section.

(16) The organization shall not duplicate or otherwise make copies of bingo paper.

(17) If an organization sells the same paper packs or paper sheets for different prices, the packs or sheets shall be distinguishable by serial number ~~[and color or border]~~.

(18) ~~An organization shall not sell bingo paper in a [if an organization bundles bingo paper faces, it shall record the serial number and the number of packs sold for each type of pack that makes up the] bundle.~~

(19) If an organization sells a bingo paper as a package it becomes a unique item with a certain price and the items in the package shall not be sold individually unless a separate serial number is used.

(20) If an organization games in back to back sessions, it may pre-sell paper for the second session as long as a different set of paper is used with a different color or border and a different serial number. The money from the preselling of paper shall be deposited with the second session receipts and the sales recorded on the second session gaming occasion records. If the price for the presold paper is discounted, the organization shall list this discount on the gaming occasion program and use a third set of paper with a different serial number.

(21) An organization shall perform an inventory and obtain permission of the office before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in

compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper, or any portion thereof.

(22) When an organization ceases to game, it [they] shall perform a final inventory and return all unused product to a distributor, donate the product to another organization with the permission of the office, or destroy the product with the permission of the office. Abandoned gaming supplies shall be seized by the office and destroyed.

**Section 2. Playing.** (1) All players shall be physically present at the location where the bingo game is held in order to play the game or claim a prize offered.

(2) The bingo session shall start when the balls are verified. The balls shall be verified before the [first ball is selected including the] pickle jar, bonanza ball, or hot ball is selected and called

(3) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(4) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be listed in the bingo program.

(5) After selecting each number, the bingo caller shall:

(a) Clearly announce the number;

(b) Display the ball or other device used in a manner allowing the players to see the number, except displaying the ball shall not be required during a speed game;

(c) Cause the ball or other device to be placed in a ball tray or other device so as to prevent it from being placed back into the selection pool; and

(d) Enter each letter and number called on a flashboard or similar device for player viewing.

(6) A winner shall be determined when the preannounced pattern of squares is covered by a player on a card.

(7) It shall be the player's responsibility to notify a volunteer including the chairperson or caller [the game operator or caller] that the player has a winning bingo combination as announced.

**Section 3. Pickle Jar, Bonanza Ball, or Hot Ball.** If the organization gives an additional prize if a patron wins on a certain number, the rules of play, including how it is awarded at the maximum payout, and cost to enter shall be listed on the bingo program. These numbers may be selected and posted before the first game is called.

**Section 4. Break Open Bingo.** (1) A break-open bingo game shall begin when, in the presence of players attending the bingo occasion, the organization calls and posts, either manually or by use of a flashboard, a predetermined quantity of randomly selected bingo numbers from a selection device or a separate bingo number container. If a flashboard is used, these numbers shall be posted on a separate board than the regular bingo board unless the regular board is capable of keeping track of these numbers separately. The balls shall then be placed back into the selection pool until the game is played on the program.

(2) Sealed bingo paper sheets for a break open game may be sold throughout the bingo occasion. Additional bingo paper sheets for a break open game shall not be sold after the organization resumes calling letters and numbers when the game is played on the program.

(3) An organization may allow players to trade break open bingo faces for new faces.

(4) If the charitable organization allows players to trade break open bingo faces for new faces, two (2) sets of the game faces shall be maintained. One (1) set shall be known as the "original set" and shall be of a different serial number than the second set, known as the "trade in" set.

(5) An organization shall list on the bingo program the price of the original set and the trade-in set.

**Section 5. Player Pick.** If the charitable organization offers a Player Pick game, the requirements in this section shall apply. (1) A player shall select numbers between one (1) and seventy-five

(75). A player shall not select more than five (5) numbers for each column. The player may allow the machine to select the numbers.

(2) Duplicate numbers shall not be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.

(3) Once selected, the machine shall print a face with the selected numbers.

(4) The faces shall conform to the construction and randomization standards set forth in 820 KAR 1:042.

(5) The price of each face and the amount of numbers that will be chosen shall be listed on the bingo program.

(6) The numbers shall be daubed as the balls are called when the game is played as listed on the bingo program.

(7) A player shall win if he or she is the first person to cover the numbers.

**Section 6. Continuation Games.** (1) Multiple patterns may be played on one (1) bingo face. Each portion of the continuation game shall be considered a single bingo game, even though the bingo balls shall not be returned to the selection pool after a winner has been determined and verified.

(2) Each winning pattern shall be verified independently.

**Section 7. Progressive Bingo Games** (1)(a) Progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on progressive games are included in the prize limit established in KRS 238.545(1), regardless of the method by which a player is eligible to participate.

(b) The licensed charitable organization shall be responsible for ensuring that the value of any progressive bingo game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the \$5,000 limit.

(c) All receipts on progressive bingo games shall be reported to the office as gross receipts for the date collected pursuant to KRS 238.550

(2) Once a progressive bingo game has been started, the game shall be played in the same manner at every occasion until the prize is awarded. The jackpot prize shall be offered at each successive bingo occasion for that charitable organization until the jackpot prize has been won.

**Section 8. Winner Verification and Registration.** (1) Manufacturers of bingo paper shall make available for purchase a verification book or other verification system for all paper manufactured.

(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of paper in play.

(3) When a player declares a winning bingo, the following steps shall be followed for winner verification:

(a) The game shall be stopped before the next number is called. If the next number has been selected, it shall be secured to ensure that if the declared "bingo" is invalid, the game will continue

(b)1. If an electronic verifier or verifier book is used, a volunteer for the charitable organization shall:

a. Show the winning face to a neutral player, who shall be a player other than the winner; and

b. Call back the perm number while in front of the neutral player

2. If any other verification system is used, a volunteer for the charitable organization shall:

a. Show the winning face to a neutral player, who shall be a player other than the winner; and

b. Call back the winning combination while in front of the neutral player.

(4) The caller shall ask at least twice if there are any other winners before announcing the close of the game. If playing a continuation game, the caller shall ask at least twice if there are any other winners before the close of that part of the game.

(5) If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:

(a) Cash prizes shall be divided equally among the verified winners; and

(b) If the prize is something other than cash and cannot be

divided among winners, prizes of equal proportionate value shall be awarded.

Section 9. Prizes. (1) If a merchandise prize or discount is available to everyone, it shall be considered a promotional item and counted as an expense.

(2) If a merchandise prize or discount is not available to everyone, it shall be included in the prize limit established in KRS 238.545(1) at its fair market value. It shall be included in expenses for purchased prizes at actual cost. If the merchandise prize is a gaming supply it shall be included in supplies expense at actual cost.

(3) The fair market value of bingo paper, a card-minding device, or pulltabs given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, or pulltab at that gaming occasion.

(4)(a) If bingo paper is given away as ~~[a promotional item]~~ a door prize~~[-]~~ or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed;
4. The amount of paper given in exchange for the voucher; and
5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its session records.

(5) If bingo paper is given away as a promotional item, the description of the paper shall be listed on the program with "free" or "promotional" listed as the price. If the organization also sells that type of paper, a separate set of paper with a separate serial number shall be used.

(6)(a) If a card-minding device is given away as a [promotional item] a door prize[-] or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed; and
4. The number of card-minding devices and the number of faces loaded on each device given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device.

(d) The organization shall retain the voucher with its session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher and package involving a card-minding device.

(7) If a card-minding device is given away as a promotional item, the description of the promotional package shall be listed on the program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(8) If an organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed, and the coupon and the voucher shall be retained with the gaming occasion records.

(9) If the organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the gaming occasion records.

(10) [(6)(a)] If a pulltab is awarded [given away] as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs from the pulltab manager by transfer of cash from bingo payout to pulltab sales and it shall be recorded as a sale on the session records, [complete a voucher.

(b) The voucher shall include:

1. The name and serial number of the pulltab game and the

number of pulltabs awarded, and

~~2. The printed name and signature of the person in charge of bingo payouts.~~

~~(e) The organization shall retain the voucher with its pulltab receipt records.]~~

(11) [(7)] Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(12) [(8)] Vouchers shall be redeemed on the same day as awarded.

TONY ROYALTY, Executive Director

TIMOTHY LEDONNE, Commissioner

LLOYD CRESS, Deputy Secretary

For TERESA HILL, Secretary

APPROVED BY AGENCY: June 7, 2007

FILED WITH LRC: June 8, 2007 at 4 p.m.

CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the rules of play for bingo.

(b) The necessity of this administrative regulation: This regulation is needed to establish the rules of play for bingo.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the Office will establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for playing bingo.

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

(a) How the amendment will change this existing administrative regulation? This amendment clarifies some confusion on how to sale and account for bingo paper. It also makes it easier for the organizations to do promotions regarding bingo paper. The regulation was amended after comments to make small changes regarding punctuation and grammar and only require a patron to get the attention of a volunteer when yelling bingo.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ease some of the requirements on the organizations for the sale of and accounting for bingo paper.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute because it explains how to correctly sale, play, and account for bingo paper.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it makes it easier to use bingo paper as a promotion.

(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 700 organizations.

(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 regulation entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The organizations will have to obtain the new regulation.

(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): The requirements for selling and



accounting for bingo paper will be easier.

(5) Provide an estimate of how much it will cost to implement this 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? Charitable gaming is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING. Is tiering applied? Tiering is not applied because this regulation applies equally to all organizations.

#### 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 Of Public Protection  
Office Of Charitable Gaming  
(Amended After Comments)

#### 820 KAR 1:050. Raffle standards.

RELATES TO: KRS 238.545(3), 238.550(5)

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) authorizes the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming and KRS 238.515(9) authorizes the office to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards for the construction and distribution of raffle materials and for the conduct of raffles

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section and shall be consecutively numbered.

(2) The detachable section of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number

(3) The following information shall be printed on each ticket:

- (a) The date and time for each drawing;
- (b) The location of each drawing;
- (c) The name of the charitable organization conducting the raffle;
- (d) The charitable organization's license number or exemption number, if any;
- (e) The price of the ticket; and
- (f) Each prize to be awarded with a fair market value over \$500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if.

(a) The raffle tickets sell for \$1 or less; [sales are initiated and concluded and all winners are selected within a twenty-four (24) hour period and the total fair market value of all raffle prizes awarded in any twenty-four (24) hour period does not exceed \$250.]

(b) The raffle sales are initiated and concluded and all winners are selected at a special charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charity games.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections of all tickets sold prior to the drawing.

(4) Before drawing, the charitable organization shall place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) If the winner is not present at the drawing, the organization shall notify the winner by certified mail within seven (7) days of the drawing that they shall claim the prize within thirty (30) days

(6) If a winner does not wish to claim the prize but wishes to donate it to the organization, they shall provide the organization a statement within the thirty (30) day period stating that they wish to donate the prize to the organization. A prize winner shall not donate the prize back to the organization if to do so would violate KRS 238.540(7). Otherwise, if a raffle winner does not claim the prize within thirty (30) days after having been contacted, the organization shall notify the Office of Charitable Gaming and draw another ticket in the presence of office personnel.

(7) The requirements of subsections (5) and (6) of this section shall be waived, and the organization shall be allowed to draw tickets until a winner is present if:

(a) The raffle tickets sell for \$1 or less; [sales are initiated and concluded and all winners are selected within a twenty-four (24) hour period, and the total fair market value of all raffle prizes awarded in any twenty-four (24) hour period does not exceed \$250.]

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.

TONY ROYALTY, Executive Director

TIMOTHY LEDONNE, Commissioner

LLOYD CRESS, Deputy Secretary

For TERESA HILL, Secretary

APPROVED BY AGENCY: June 7, 2007

FILED WITH LRC: June 8, 2007 at 4 p.m.

CONTACT PERSON: Leah Cooper Boggs, Assistant Director



of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the rules for conducting a raffle.

(b) The necessity of this administrative regulation: This regulation is needed to establish the rules for conducting a raffle.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the Office will establish and enforce reasonable standards for the conduct of charitable gaming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for conducting a raffle.

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

(a) How the amendment will change this existing administrative regulation? This amendment changes the ticket price at which an organization must use printed tickets instead of movie strip tickets. The amendment also allows patrons to donate the prize back to the organization.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to make it easier to conduct strip ticket raffles and donate prizes back to the organization. The regulation was amended after comments to specify that a prize winner could not donate the prize to the organization if there was a conflict with the statute.

(c) How the amendment conforms to the content of the authorizing statutes: It conforms to the content of the authorizing statute because it makes it easier for an organization to conduct a legitimate raffle.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist because it will make it easier for the organizations to conform to the law.

(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 700 organizations.

(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 regulation entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The organizations will have to obtain the new regulation.

(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): The organization can have more strip ticket raffles and receive donations of the prizes back from the winners.

(5) Provide an estimate of how much it will cost to implement this 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? Charitable gaming is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all organizations.

## 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 of Public Protection

Office Of Charitable Gaming

(Amended After Comments)

820 KAR 1:057. Accurate records.

RELATES TO: KRS 238.550(5), 238.560(2)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) and 238.550(5) authorize the office to establish and enforce standards for accounting, recordkeeping, and reporting to the office to ensure charitable gaming receipts are counted and reported. This administrative regulation establishes the minimum requirements for accurate records.

Section 1. Bank Account and Records. (1) A licensed charitable gaming organization shall maintain a single bank account for charitable gaming receipts. This account shall be separate from any other account maintained by the organization.

(2) Disbursements for charitable gaming expenses and charitable donations shall be made by check or electronic fund transfer directly from the charitable gaming account

(3) All receipts from each gaming occasion shall be deposited by the second business day following the occasion at which they were received. The deposit for each occasion shall be made separately and shall not be combined with the deposit from any other occasion.

(4) All types of deposits, including startup cash, bad checks collected and check collection fees, progressive game carry forward, and adjusted gross receipts, shall be listed separately on the deposit reconciliation sheet, and the deposit slip, if possible. Each individual check shall be listed separately on the deposit slip. If a register tape is run listing the amounts of the individual checks, it may be attached to the deposit slip [ticket]. Total cash and coins shall be listed separately. The organization shall keep a copy of the deposit slip [ticket].

(5) Checks that have been returned for insufficient funds that have not been collected shall be retained by the organization for three (3) years following the close of the calendar year in which the check was issued. If the check has been turned over to someone

else for collection, the organization shall keep a copy of the check with information regarding the person collecting the check.

(6) Monthly bank statements and reconciliations for all accounts shall be maintained for three (3) years following the close of a calendar year.

(7) Copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be provided to the office upon request.

(8) Gross receipts shall include the money received from the sale of raffle tickets, bingo cards or faces, pickle jars, bonanza balls, or hot balls card-minding devices, pulltabs, charity fundraising event games, special limited charity fundraising event games, bad check collections, credit card fees and reasonable check collection fees minus bad checks.

Section 2. Start-up Cash. (1) If the source of start-up cash is not the charitable gaming account, the source of the start-up cash shall be identified on the gaming occasion sheet and signed by the chairperson.

(2) Start-up cash from one (1) organization shall not be commingled with the start-up cash from another organization. The start-up cash shall be identified on the check withdrawing the funds and on the deposit slip, if possible.

Section 3. Organization Records. (1) The chief financial officer shall be the custodian of the gaming records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the office.

(2) An organization that hand-writes data and later enters the information onto another form or computer program shall retain the hand-written records along with the other form or computer generated record.

(3) Organizations shall prepare and maintain accurate and adequate corporate or other organizational records including articles of incorporation, minutes of board of directors meetings, and resolutions.

(4) Organizations shall maintain detailed records of all expenditures made in furtherance of its charitable purpose, including all charitable contributions.

(5) All records shall be made available for inspection and audit at the request of the office.

(6) Any organization's records, or copies of those records, deemed necessary to complete an inspection, audit, or investigation may be retained by the office or its employees or agents. The office shall provide a written receipt of the records at the time of removal.

(7) Organizations shall provide records requested by the office, or any of its employees, within ten (10) calendar days, unless a longer response time is allowed by the request.

(8) An organization shall perform an inventory and obtain permission of the office before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof.

(9) When an organization ceases to game, it [they] shall perform a final inventory and return all unused product to a distributor, donate the product to another organization with the permission of the office, or destroy the product with the permission of the office.

(10) When an organization ceases to game, it shall spend or disburse the charitable gaming funds consistent with its charitable purpose.

TONY ROYALTY, Executive Director  
TIMOTHY LEDONNE, Commissioner  
LLOYD CRESS, Deputy Secretary

For TERESA HILL, Secretary

APPROVED BY AGENCY: June 7, 2007

FILED WITH LRC: June 8, 2007 at 4 p.m.

CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does. The statute requires the organizations to keep accurate records but there is no explanation for what are considered accurate records. This regulation gives guidance to organizations regarding what are considered accurate organization records.

(b) The necessity of this administrative regulation: This regulation is needed to clarify the accurate record requirement in the statute.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 238.515(2) provides that the Office will establish and enforce reasonable standards for the conduct of charitable gaming and KRS 238.515(4) requires the Office to establish standards of accounting, recordkeeping, and reporting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes because the organizations will know what is required by accurate records.

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

(a) How the amendment will change this existing administrative regulation? The amendment allows credit card fees paid to the organization and receipts from side games to be deposited into the charitable gaming account. The amendment also sets forth the requirements on how to dispose of gaming supplies when the organization ceases to game. The regulation was amended after comment to require organizations to disperse its gaming funds in compliance with its charitable purpose when it ceases to game.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary so that organization will not have to deposit receipts from credit cards in their general account and then transfer those into the gaming and then back again. The amendment is also necessary so that organizations will know how to dispose of gaming supplies.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment includes rules on how to account for charitable gaming receipts and charitable gaming fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the organizations so that it will be less complicated to deposit receipts and dispose of product when they cease gaming.

(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 700 organizations.

(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 regulation entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The organizations will have to obtain the new regulation.

(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) The organization will be allowed to deposit credit card fees into the charitable gaming account and therefore, the bookkeeping will be less complicated. Also, the organization will know how to dispose of supplies when they cease to game.

(5) Provide an estimate of how much it will cost to implement this 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? Charitable gaming is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all organizations.

#### 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 Of Public Protection

Office Of Charitable Gaming

(Amended After Comments)

#### 820 KAR 1:058 Gaming occasion records.

RELATES TO: KRS 238.550

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.550(3), (5), (6), (7), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.500, 238.515, and 238.550 authorize the office to establish and enforce standards for accounting, recordkeeping and reporting to the office to ensure charitable gaming receipts are properly accounted for by the organizations. This administrative regulation establishes the minimum requirements for recordkeeping.

Section 1. General Provisions. (1) Each licensed charitable gaming organization shall prepare and maintain records for each gaming occasion. The gaming occasion records shall be prepared or completed by a volunteer or chairperson of the organization. The gaming occasion records shall not be completed by a bookkeeper who is independently compensated for doing so.

(2) Gaming proceeds shall be counted by an officer or a chairperson and the count shall be verified. A count may be verified by a volunteer. ~~[The name and signature of each person counting or verifying shall appear on the gaming occasion record.]~~

(3) A gaming occasion record shall contain:

(a) The date of the gaming occasion;

(b) The name and license number of the organization conducting the gaming occasion;

(c) The name and address of the donor of every donated prize

whose fair market value is in excess of \$500. [The printed name and signature of the chairperson in charge of the gaming occasion,

(d) The name and signature of the person taking the deposit from the gaming occasion;

(e) The printed name and signature of the person making the deposit, if different from the person taking the deposit;

(f) The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash;

(g) If any donated prizes are awarded during a gaming occasion, a notation of each prize that was donated and the fair market value. In addition, if any item with a fair market value in excess of \$500 is donated, the notation for that item shall include the following information:

1. The date the item was received;

2. The date the item was awarded;

3. The name of the donor;

4. The street address, city, and state of the donor;

5. A description of the donated item; and

6. The fair market value of the donated item;]

(d) [(h)] A deposit reconciliation worksheet which records:

1. All currency, coins, checks, and credit card receipts available for deposit;

2. All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pulltab sales, any progressive game carry forward, bad checks collected and check collection fees, and all other gaming receipts that should be available for deposit; and

3. Any variance between the amount of currency, coins, checks, and credit card receipts actually available for deposit, and the amount that should be available for deposit according to the gaming occasion records;

4. The amount of donations received at the gaming occasion which will be deposited into the general account;

5. The printed name and signature of the chairperson in charge of the gaming occasion;

6. The printed name and signature of the person taking the deposit from the gaming occasion;

7. The printed name and signature of the person making the deposit, if different from the person taking the deposit; and

8. The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash, and

(i) A copy of the gaming occasion program, which shall include a printed listing of all bingo products for sale and the price of each product and all bingo games played and the payout for each game;

(4) [The organization shall complete Form CG-Vol for each gaming occasion and keep it with the gaming occasion record for that event.

(5) If an organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed and the coupon and the voucher shall be retained with the gaming occasion records.

(5) If an organization offers coupons for pulltabs, the pulltabs given away shall be recorded on the gaming occasion records and on CG-FIN Attachment C and D. The coupon shall be retained with the gaming occasion records.

(6) If the organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the gaming occasion records.

(7) If the organization sells gift certificates for pulltabs, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, the pulltabs given away shall be recorded on the gaming occasion records and on CG-FIN Attachment C and D. The gift certificate [the coupon] shall be retained with the gaming occasion records.

(8) All charitable gaming receipts and records shall be kept separate from noncharitable gaming receipts and records.

(9) [(8)] All gaming occasion records shall be retained by the organization for a period of three (3) years. Gaming occasion records shall be made available for inspection and audit by the office

upon request.

(10) [(9)] Organizations shall provide records requested by the office, or any of its employees, within ten (10) calendar days unless a longer response time is allowed by the request.

Section 2. Bingo Paper Sale Records. [(4)] Bingo paper sale records shall contain the following information:

(1) [(a)] Attendance determined by headcount of number of people playing bingo;

(2) [(b)] Each type of bingo paper being sold;

(3) [(c)] The serial number of the set of each type of paper sold;

(4) [(d)] The number of each type of bingo paper given away with the voucher being redeemed attached to the gaming occasion records, if applicable;

(5) [(e)] Number of each type of bingo paper destroyed;

(6) [(f)] The number of each type of bingo paper sold;

(7) [(g)] The price of each type of bingo paper sold;

(8) [(h)] The number of pickle jar, bonanza ball, or hot ball games sold;

(9) [(i)] The price of pickle jar, bonanza ball, or hot ball games and whether the price is per person or per pack;

(10) [(j)] The number of player pick bingo games sold;

(11) [(k)] The price of each player pick bingo game sold;

(12) [(l)] The amount of money expected to be received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that occasion;

(13) [(m)] The amount of money actually received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that occasion;

(14) [(n)] The cash short or cash over from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that occasion; and

(15) [(o)] The sales report printed from the player pick machine that includes the number of games sold, price for each game, and the amount of money expected from the sale of player pick games for that gaming occasion; and

[(p)] The printed name and signature of the person responsible for bingo paper sales at that gaming occasion;

(16) Records of all carryover or cumulative bingo games played which [(2) Carryover or cumulative bingo game records] shall contain the following information:

(a) The name of each progressive bingo game in play;

(b) The amount carried over from the previous occasion;

(c) The receipts from the current occasion;

(d) The amount paid out for the current occasion; and

(e) The amount carried forward to the next occasion; and

[(f)] The printed name and signature of the person responsible for carryover or cumulative bingo game records at that occasion;

(17) A copy of the gaming occasion program, which shall include:

(a) The organization name and license number;

(b) A specific description [printed listing] of all bingo products for sale and the price of each product; and

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(18) Form CG-Vol.

Section 3. Bingo Payout Records. Bingo payout records shall contain the following information:

(1) A list of all bingo games that will be played at that gaming occasion;

(2) Each pickle jar, bonanza ball, or hot ball game available to be awarded, including the selected bingo ball associated with each;

(3) The prize expected or available to be awarded for each bingo game and door prize;

(4) The prize that was actually awarded for each bingo game and door prize;

(5) A notation for the prize awarded for each bingo game and door prize, specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise, the cost of the merchandise and the fair market value of the merchandise;

(6) If a voucher was issued for [pulltab;] card-minding devices, or bingo paper, the fair market value of the [pulltab;] card-minding devices, or bingo paper;

(7) The total amount of all cash awarded for bingo prizes and door prizes;

(8) The total amount of all checks issued as bingo prizes and door prizes;

(9) The total cost and fair market value of all merchandise awarded for bingo prizes and door prizes;

(10) A grand total of cash, checks, and fair market value of merchandise awarded for bingo prizes and door prizes, which shall not exceed \$5,000; and

(11) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check

(12) If a pulltab is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs from the pulltab manager by transfer of cash from bingo payout to pulltab sales. It shall be recorded as a cash payout on the bingo payout session record and it shall be included as a gross receipt on the pulltab session record and on CG-FIN Attachment C and D.

(13) If pulltabs are given away as a door prize, the amount given away:

(a) Shall be included as a gross receipt on the pulltab session record and on CG-FIN Attachment C and D;

(b) Shall be listed on the pulltab session record as given away;

(c) Shall be included at fair market value on CG-FIN Attachment B to determine compliance with the \$5,000 payout limit;

(d) Shall be deducted from gross receipts on CG-FIN Attachment C and D; and

(e) Shall not be listed as a purchased prize on CG-FIN Part 1 line 2.

(14) If pulltabs are given away as a promotional item, the amount given away:

(a) Shall be included as a gross receipt on the pulltab session record and on CG-FIN Attachment C and D;

(b) Shall be listed on the pulltab session record as given away;

(c) Shall be deducted from gross receipts on CG-FIN Attachment C and D; and

(d) Shall not be listed as a purchased prize on CG-FIN Part 1 line 2. [-and

(12) The printed name and signature of the person responsible for bingo payouts during each gaming occasion].

Section 4. Card-minding Device Records. Card-minding device records shall contain the following information:

(1) The type of programs loaded, including the number of faces;

(2) The number of units rented for each type of program;

(3) The number of each type of card-minding device rental given away, with the redeemed voucher attached to the gaming occasion records;

(4) The number of units voided for each type of program;

(5) The price per unit for each type of program;

(6) The amount of money expected to be received from the rental of card-minding devices;

(7) The actual amount of money received from the rental of card-minding devices for that gaming occasion;

(8) The cash short or cash over from the rental of card-minding devices for that gaming occasion;

(9) The total sales activity report; [and]

(10) A copy of the gaming occasion program, which shall include:

(a) The organization name and license number;

(b) A specific description [printed listing] of all bingo products for sale and the price of each product; and

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(11) Form CG-Vol. [The printed name and signature of the person responsible for card-minding device rentals at that gaming

occasion.]

Section 5. Pulltab Records. [(4)] Pulltab records shall contain the following information for each session [game]:

- (1) [(a)] The name, serial number, and form number of all games played;
- (2) [(b)] The name of all progressive jackpot games in play during that gaming occasion;
- (3) [(c)] The ticket count for each pulltab game sold;
- (4) [(d)] The price for each ticket;
- (5) [(e)] The prize expected or available to be awarded for each pulltab game, including the progressive jackpot games;
- (6) [(f)] The name, serial number, form number, and quantity of pulltab tickets given away as a door prize or a promotional item, [prizes, excluding those pulltab games manufactured to payout in pulltabs instead of cash]—The redeemed voucher shall be attached to the gaming occasion records;
- (7) If a pulltab is awarded as a pulltab prize, the person in charge of pulltab payouts shall purchase the pulltabs from the deal being awarded as the prize by transfer of cash from the deal being sold to the deal being awarded as the prize. It shall be recorded as a cash payout for the deal being sold and it shall be included as a gross receipt for the deal being awarded as a pulltab prize and on CG-FIN Attachment C and D. [(g)]
- (8) The prize that was actually awarded for each pulltab game, including the progressive jackpot games;
- (9) [(9)] [(h)] A notation for the prize awarded for each pulltab game specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost [and fair market value of that merchandise];
- (10) [(10)] [(i)] If a voucher was issued for [pulltabs,] card-minding devices, or bingo paper, the fair market value of the [pulltabs,] card-minding devices, or bingo paper;
- (11) [(11)] [(j)] If a pulltab game was played in conjunction with a progressive jackpot game, as designed by the manufacturer, the amount contributed to the progressive jackpot;
- (12) [(12)] [(k)] The cash short or cash over for each pulltab session [game];
- (13) [(13)] [(l)] The total amount of all cash awarded for pulltab prizes;
- (14) [(14)] [(m)] The total amount of all checks issued as pulltab prizes;
- (15) [(15)] [(n)] The total fair market value of all merchandise awarded for pulltab prizes;
- (e) The total cost of [amount of money paid for] all merchandise awarded for pulltab prizes;
- (16) [(16)] [(p)] If a check from the organization's charitable gaming checking account was issued as a pulltab prize instead of cash, the number of the check;
- (17) [(17)] [(q)] The total amount of money from any incomplete sale of pulltab games;
- (18) [(18)] [(r)] Records of any progressive pulltab games sold which [and
- (r) The printed name and signature of the person responsible for the payouts during each gaming occasion.
- (2) Progressive pulltab records] shall contain the following information:
  - (a) The name of each progressive pulltab jackpot game in play;
  - (b) The amount carried over from the previous occasion;
  - (c) The receipts from the current occasion;
  - (d) The amount paid out for the current occasion;
  - (e) The amount carried forward to the next occasion;
  - (f) The serial number of all games that contributed to the prize pool; and
  - (19) [(19)] Form CG-Vol. [(g)] The printed name and signature of the person responsible for progressive pulltab games at that occasion.]

Section 6. Raffle Records. (1) If the raffle tickets sell for \$100 or more, the [Except as provided in subsection (2) of this section,] raffle records shall contain the following information:

- (a) The number of raffle tickets printed;
- (b) The sales price for each ticket;

- (c) The date raffle ticket sales began;
- (d) The date the raffle drawing was held;
- (e) A voided raffle ticket or copy of a raffle ticket;
- (f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;
- (g) The total amount of money collected for the raffle event;
- (h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
- (i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
- (j) Total cash short or cash over amount from raffle ticket sales for the raffle event;
- (k) A list of all raffle prizes awarded;
- (l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost [and fair market value];
- (m) The total amount of all cash awarded for raffle prizes;
- (n) The total amount of all checks issued as raffle prizes;
- (o) [The total fair market value of all merchandise awarded as raffle prizes;
- (p) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;
- (q) [(q)] Each winning ticket stub;
- (r) [(r)] All unsold tickets;
- (s) [(s)] A list of all raffle expenses including a copy of all invoices supporting each expense; and
- (t) [(t)] The printed name and signature of the person responsible for the raffle event records.
- (2) If the raffle tickets sell for fifty (50) dollars to \$100, the raffle records shall contain the following information:
  - (a) The number of raffle tickets printed;
  - (b) The sales price for each ticket;
  - (c) The date raffle ticket sales began;
  - (d) The date the raffle drawing was held;
  - (e) A voided raffle ticket or copy of a raffle ticket;
  - (f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;
  - (g) The total amount of money collected for the raffle event;
  - (h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
  - (i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
  - (j) Total cash short or cash over amount from raffle ticket sales for the raffle event;
  - (k) A list of all raffle prizes awarded;
  - (l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;
  - (m) The total amount of all cash awarded for raffle prizes;
  - (n) The total amount of all checks issued as raffle prizes;
  - (o) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;
  - (p) Each winning ticket stub;
  - (q) A list of all raffle expenses including a copy of all invoices supporting each expense; and
  - (r) The printed name and signature of the person responsible for the raffle event records.
- (3) If the raffle tickets sell for more than one (1) dollar but less than fifty (50) dollars, the raffle records shall contain the following information:
  - (a) The number of raffle tickets printed;
  - (b) The sales price for each ticket;
  - (c) The date raffle ticket sales began;
  - (d) The date the raffle drawing was held;
  - (e) A voided raffle ticket or copy of a raffle ticket;
  - (f) The total amount of money collected for the raffle event;
  - (g) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
  - (h) The total amount of money that should have been collected

based on the number of ticket stubs collected for the raffle event;

(i) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(j) A list of all raffle prizes awarded;

(k) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(l) The total amount of all cash awarded for raffle prizes;

(m) The total amount of all checks issued as raffle prizes;

(n) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(o) Each winning ticket stub;

(p) A list of all raffle expenses including a copy of all invoices supporting each expense; and

(q) The printed name and signature of the person responsible for the raffle event records.

(4) If the raffle ticket sells for one (1) dollar or less, [is conducted pursuant to 820 KAR 1:050, Section 1(4);] the raffle records shall contain the following information:

(a) The beginning and ending serial number or ticket number for each roll of tickets sold or the beginning and ending number of the tickets printed;

(b) The quantity of tickets sold;

(c) The sales price of the tickets;

(d) The date of the raffle;

(e) The total amount of money collected for the raffle event;

(f) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;

(g) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(h) A list of all raffle prizes awarded;

(i) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost [and fair market value];

(j) The total amount of all cash awarded for raffle prizes;

(k) The total amount of all checks issued as raffle prizes;

(l) [The total fair market value of all merchandise awarded as raffle prizes;

(m) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(n) Each winning ticket stub;

(o) A list of all raffle expenses, including a copy of all invoices supporting each expense; and

(p) The printed name and signature of the person responsible for the raffle event records.

Section 7. Charity Fundraising Event Records. (1) Charity fundraising event records for a festival or carnival shall contain the following information:

(a) The name of each [type of] game of chance played;

(b) The price to play each [type of] game of chance;

(c) The adjusted gross receipts from the sale of each [amount of money received from the sale of each type of] game of chance;

(d) The grand total of adjusted gross receipts [money] received from the play [sale] of all games of chance;

(e) [The total amount of all cash awarded for each type of game of chance prize and door prize;

(f) The total amount of all checks issued for each [type of] game of chance prize and door prize;

(g) [The total cost [and fair market value] of all merchandise awarded for each type of game of chance prize and door prize;

(h) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(i) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records;

(j) If pulltabs are sold, accurate pulltab records;

(k) If a raffle is conducted, accurate raffle records;

(l) [Within the period of the charity fundraising event, a listing of the raffle as a type of game of chance along with other games of

chance;

(m) If the charity fundraising event has a capital prize raffle for which sales were made outside the charity fundraising event period as well as during the charity fundraising event, accurate raffle records as required by Section 6 of this administrative regulation;

(n) If the charity fundraising event continues for more than one (1) day, a summary of the required information for each day; and

(o) The printed name and signature of each person responsible for the gaming at the charity fundraising event.

(2) Special limited game records for a charity fundraising event shall contain:

(a) The name of each game to be played;

(b) The adjusted gross receipts for each game for each day of the charity fundraising event;

(c) A list of all merchandise prizes awarded and the cost; and

(d) The printed name and signature of each person responsible for special limited game records at a charity fundraising event.

Section 8. Special Limited Charity Fundraising Event Records.

(1) Special limited charity fundraising event records shall contain the following information for special limited charitable games:

(a) The name of each game to be played;

(b) The quantity of scrip, chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of scrip, chips, or imitation money;

(c) The quantity of scrip, chips, or imitation money the central bank sold during the special limited charity fundraising event;

(d) The amount of money received by the central bank from the sale of scrip, chips, or imitation money;

(e) Cash short or cash over from the sale of scrip, chips, or imitation money;

(f) The quantity of scrip, chips, or imitation money collected by the central bank and redeemed for prizes;

(g) Prizes awarded by the central bank;

(h) A notation for prizes awarded specifying whether each prize was cash, check, or merchandise, and if merchandise, a description of that merchandise and the cost [and fair market value];

(i) The printed name and signature of each person of the person responsible for special limited charity fundraising event records;

(2) The amount of money corresponding to the scrip, chips, or imitation money collected by the central bank shall be compared to the sale of scrip, chips, or imitation money by the central bank at the conclusion of the special limited charity fundraising event. Any variance shall be documented and cash short or cash over shall be determined.

(3) For all tournaments played during special limited charity fundraising events, the special limited charity fundraising event records shall contain the following information in addition to the regular records required at special limited charity fundraising events:

(a) A record of attendance shall be kept for the special limited charitable games; and

(b) A copy of the gaming occasion program, which shall include the

1. Organization name and license number;

2. Cost to enter, the cost of the buy backs, the cost of the add ons;

3. Rules of the game;

4. Manner for raising blinds or closing tables, and

5. Prizes. The prizes may be listed as a percentage of the receipts. [The cost to enter, the cost of the buy backs, the rules of the game, the manner for raising blinds or closing tables, and the prizes shall be listed on the gaming occasion program. The prizes may be listed as a percentage of the receipts.]

(4) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records shall be maintained.

(5) If pulltabs are sold, accurate pulltab records shall be maintained.

(6) If raffles are [Raffles] conducted at a special limited charity fundraising event, accurate raffle records shall be maintained [shall



be accounted for in the following manner:

(a) If a raffle is conducted within the period of the special limited charity fundraising event, a record of raffle receipts and payouts shall be listed on the special limited charity fundraising event gaming occasion record; and

(b) If the special limited charity fundraising event has a capital prize raffle for which sales were made outside the special limited charity fundraising event period, as well as during the special limited charity fundraising event, accurate raffle records shall be maintained according to Section 6 of this administrative regulation.

(7) The organization shall complete Form CG-Vol and keep it with the gaming occasion record for that event.

Section 9. Incorporation by Reference. (1) Form CG-Vol, "Charitable Gaming Volunteer Sign Up Sheet 4/07(2/06)" is incorporated by reference

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY ROYALTY, Executive Director

TIMOTHY LEDONNE, Commissioner

LLOYD CRESS, Deputy Secretary

For TERESA HILL, Secretary

APPROVED BY AGENCY: June 7, 2007

FILED WITH LRC: June 8, 2007 at 4 p.m.

CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: The statute requires the organizations to keep accurate records and report regarding their gaming events. However, there is no explanation of what information needs to be recorded and available for audit. This regulation gives guidance to organizations regarding what information is required.

(b) The necessity of this administrative regulation: This regulation is needed to clarify what information should be recorded by the organization at a gaming occasion.

(c) How does this administrative regulation conform to the content of the authorizing statutes KRS 238.515(2) provides that the Office will establish and enforce reasonable standards for the conduct of charitable gaming and KRS 238.515(4) requires the Office to establish standards for accounting, recordkeeping, and reporting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes because it explains the expectations regarding what information should be recorded at a gaming event.

(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 simplifies the signature requirements for the gaming occasion records, simplifies the recordkeeping required for charity fundraising events, and reduces the records required to be kept for most raffles. The regulation was amended after comments to require that the bingo program include a specific description of the products for sale and to explain how to handle pulltabs given away as bingo prizes, door prizes, and promotional items.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ease the requirements on the organizations for raffles and charity fundraising events.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute because it still requires that receipts be reported but it eases requirements on

non-essential information.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make it easier for the organizations to conduct gaming and record essential information because it reduces the information required.

(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 700 organizations.

(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 regulation entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The organizations will have to obtain the new regulation.

(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): The recordkeeping requirements for the organizations are reduced, particularly for raffles and charity fundraising events.

(5) Provide an estimate of how much it will cost to implement this 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? Charitable gaming is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering was applied to the raffle recordkeeping regulations. The organizations are required to keep different records depending on the price of the raffle tickets with the requirements increasing as the ticket price goes up.

#### 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:



RELATES TO: KRS 238.536, 238.550(9)(11)(6)  
 STATUTORY AUTHORITY: KRS 238.515(2), (4), (9),  
 238.550(9)(11)(6)(f)

(3) The items that may be included as a bookkeeping expense,

including:

(a) List the actions that each of the regulation entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The organizations will have to obtain the new regulation.

(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): The organizations will be able to pay bad check collection fees, fees for check debit machines, raffle incentives, and fees for Form 11-C from the charitable gaming account.

(5) Provide an estimate of how much it will cost to implement this 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? Charitable gaming is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all organizations.

#### 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:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy Division of Certificate of Need (Amended After Comments)

900 KAR 6:050. Certificate of Need administrative regulation.

RELATES TO: KRS 216B 010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 194A 030, 194A.050, 216B.040(2)(a)1, 216B.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/chnp/con>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of a citizen of the Commonwealth.

(6) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.

(7) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(8) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.

(9) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, [personal care beds,] and Alzheimer nursing home beds.

(10) "Nonsubstantive review" is defined by KRS 216B.015(17).

(11) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(12) "Office or clinic" means the physical location at which health care services are provided.

(13) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(14) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(15) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.

(16) "Proposed service area" means the geographic area the applicant proposes to serve.

(17) "Public information channels" means the Division of Communications in the Cabinet for Health and Family Services.

(18) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(19) "Qualified academic medical center" means:

(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership which an accredited medical school operated within the Commonwealth of Kentucky; or

(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person of a type or types referenced in paragraphs (a) or (b) of this subsection.

(20) "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(21) "Show cause hearing" means a hearing during which it is

determined whether a person or entity has violated provisions of KRS Chapter 216B.

**Section 2. Letter of Intent.** (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation; and

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

**Section 3. Certificate of Need Application.** (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6.020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

- (a) Increase the scope of the project;
- (b) Increase the amount of the capital expenditure;
- (c) Expand the size of the proposed service area;
- (d) Change the location of the health facility or health service;

or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete may be amended at a public hearing to:

- (a) Decrease the scope of the project,
- (b) Decrease the amount of the capital expenditure; or
- (c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b) The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

**Section 4. Timetable for Submission of Applications.** (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section 8 of this administrative regulation shall be as follows:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment and new technological developments shall be given on the third Thursday of the following months:

1. January; and

2. July.

(b) Public notice for residential hospice facilities, hospice agencies and home health agencies shall be given on the third Thursday of the following months:

1. February; and

2. August.

(c) Public notice for ground ambulance providers, private duty nursing services, mobile services and rehabilitation agencies shall be given on the third Thursday of the following months:

1. March; and

2. September.

(d) Public notice for day health care programs, prescribed pediatric extended care facilities and personal care beds shall be given on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency beds, ambulatory care centers, freestanding ambulatory surgical centers, outpatient health care centers [primary care centers with outpatient diagnostic and surgical services], and birthing centers shall be given on the third Thursday of the following months

1. May; and

2. November.

(f) Public notice for long-term care beds and acute care hospitals including all other State Health Plan-covered services to be provided within the proposed acute care hospital shall be given on the third Thursday of November.

(g) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be given on the third Thursday of the following months:

1. June; and

2. December.

(h) A proposal not included in paragraphs (a) through (g) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

**Section 5. Certificate of Need Review.** (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

**Section 6. Completeness Review.** (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review requested pursuant to Section 8 of this administrative regulation. Applications for

which nonsubstantive review status has been requested pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(6) A determination that an application is complete shall:

(a) Indicate that the applicant has minimally responded to the necessary items on the application;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval of a certificate of need.

(7) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(8) If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete;

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(10) If the application, or if the information submitted, is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(12) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5.020.

(b) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(c) An application seeking to reestablish a licensed healthcare facility, or service, which was provided at the healthcare facility and which was voluntarily discontinued by the applicant, shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare service or facility:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for relicensure;

d. Was not an express condition of any subsequent Certificate of Need approval; and

e. Did not occur less than twenty-four (24) months prior to the submission of the application to reestablish;

2. The proposed healthcare service shall be provided within the same service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to reestablish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:

(a) If the applicant has identified a need for the proposal in the geographic area defined in the application; and

(b) If the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. The cabinet shall determine if the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. The cabinet shall determine:

(a) If the proposal shall serve to accomplish appropriate and

effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) If the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability. The cabinet shall determine:

(a) If it is economically feasible for the applicant to implement and operate the proposal; and

(b) If applicable, if the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services. The cabinet shall determine:

(a) If the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) The cabinet may grant nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) 1. There is no substantial change in health services or bed capacity; and

2. The change of location or relocation is within the same county; or

(b) The change of location for a psychiatric residential treatment facility is within the same district as defined in KRS 216B.455 and is to the same campus as a licensed psychiatric residential treatment facility.

(2) In addition to the projects specified in KRS 216B.095(3)(a) through (e) pursuant to KRS 216B.095(f), the Division of Certificate of Need may grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c) The proposal involves an application to relocate nursing facility beds from one long term care facility to another long term care facility and the requirements established in this paragraph are met.

1. If the relocation takes place within the same county, the following restrictions shall apply:

a. The application shall be filed on or before September 28, 2005; and

b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application.

2. If the relocation is to be from one county to another county, the following restrictions shall apply:

a. The letter of intent shall be filed no later than August 29, 2005 and the application shall be filed no later than September 28, 2005;

b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application;

c. The selling facility shall be located in a county that had a nursing facility bed occupancy rate of less than ninety-five (95) percent (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent according to the latest published version of the Kentucky Annual Long Term Care Services Report;

d. The acquired beds shall only be relocated to a county whose

nursing facility bed occupancy was ninety-five (95) percent or greater (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent) or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent according to the latest published version of the Kentucky Annual Long Term Care Services Report; and

e. A long term care facility shall not sell or acquire more than ten (10) of its licensed nursing facility beds;

(d) The proposal involves an application by an existing licensed hospital to add to its existing acute care bed inventory, and the requirements established in this paragraph are met.

1. The hospital had not previously filed an application which was granted nonsubstantive review status pursuant to this paragraph; [The letter of intent shall be filed no later than August 27, 2007, and the application shall be filed no later than September 26, 2007.];

2. The application proposes to increase the hospital's existing licensed acute care bed inventory by no more than twenty (20) percent; and

3. The hospital's acute non-psychiatric inpatient occupancy rate was seventy (70) percent or greater (rounded up to the next whole number) according each of the two (2) most recently published versions of the Kentucky Annual Hospital Utilization and Services Report; and

4. The hospital documents that during each of the two (2) previous calendar years at least twenty (20) percent of its acute nonpsychiatric inpatient hospital admissions originated from counties not included in the hospital's area development district, as created and established pursuant to KRS 147A.060. [The proposal involves an application to establish no more than thirty (30) nursing facility beds at a dual-licensed pediatric facility as defined in 007-KAR-1.032, Section 4.];

(e) 1. The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district; and

a. There is no increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the beds are relocated delicensures those beds; and

2. If neonatal Level II beds are relocated or transferred pursuant to this subsection:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(f) The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted; or

(g) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds.

(3) If an application is denied nonsubstantive review status by the Division of Certificate of Need, the application shall automatically be placed in the formal review process.

(4) If an application is granted nonsubstantive review status by the Division of Certificate of Need, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(5) If an application is granted nonsubstantive review status by the Division of Certificate of Need, any affected person who be-

believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings. Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the Division of Certificate of Need, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Division of Certificate of Need shall not be reviewed for consistency with the State Health Plan.

(7) The cabinet shall approve applications for certificates of need that have been granted nonsubstantive review status by the Division of Certificate of Need if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure and the cabinet finds that the facility or service with respect to which the capital expenditure is proposed to be made is required. The cabinet shall find that the facility or service with respect to which the capital expenditure is proposed to be made is required, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(8) The cabinet shall disapprove applications for certificates of need that have been granted nonsubstantive review if:

(a) The cabinet finds that the applicant is not entitled to nonsubstantive review status; or

(b) The cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status by the Division of Certificate of Need within thirty-five (35) days of the date that public notice is given that nonsubstantive review status has been granted.

(10) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

**Section 9. Notice of Decision.** (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval, and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refilled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

**Section 10. Deferral of an Application.** (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review.

(a) If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the

date of the hearing.

(b) If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing.

(c) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person if the application is subject to formal review, or an affected person if the application has been granted nonsubstantive review, within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

**Section 11. Withdrawal of an Application.** (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

**Section 12. Emergency Circumstances.** (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a)1. The person is not a hospital, and the person is licensed by the appropriate Kentucky licensing authority to provide the service necessary to alleviate the emergency; or

2. The person is a hospital, and the hospital has an already-issued certificate of need to provide the service necessary to alleviate the emergency;

(b) The Division of Certificate of Need is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and

(c) The Division of Certificate of Need acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Division of Certificate of Need shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services, which shall contain the following information:

(a) A detailed description of the emergency which shall include at least the following information:

1. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service;

2. A list of the providers in the county licensed to provide the services that will be provided during the emergency; and

3. Proof that:

a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; or

b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided, and

(d) The expected duration of the emergency.



(3) The Division of Certificate of Need may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency does exist.

(4) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 4 of this administrative regulation.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency ceases to exist; or

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

~~[(6) Once a Certificate of Need is issued, it shall be issued for the limited purpose of alleviating the emergency and shall remain in effect until the emergency ceases to exist. An emergency shall cease to exist if the person or persons to whom the service is being rendered no longer require the service or an existing or new provider becomes licensed or certified to provide the service for which the emergency has been declared and provides notice to the Division of Certificate of Need and the Office of Inspector General that it can meet the needs of the person or persons for whom the emergency service is being provided.]~~

~~[(7) When the emergency circumstance ceases to exist, the CON holder shall notify the Division of Certificate of Need that it is no longer providing the service and the Division of Certificate of Need shall notify the Office of Inspector General that the emergency no longer exists.]~~

~~[(8) The Office of Inspector General shall revoke the license of the emergency certificate of need holder upon notification of revocation by the Division of Certificate of Need.]~~

Section 13. Transfers of Certificates of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing the documents with the Division of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business day after the due date.

(3) Failure to file documents in accordance with the schedule and manner provided in subsections (1) and (2) of this section shall result in the materials being returned to the sender and the cabinet shall not take additional action until the material is properly resubmitted.

(4) The Division of Certificate of Need shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be

included.

(6) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Health facilities established without a certificate of need pursuant to KRS 216B.020(2)(a) shall not be considered affected persons for purposes of KRS 216B.085 and shall not have the right to request a public hearing pursuant to KRS 216B.085.

(2) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(3) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing.

(4) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the CON newsletter if applicable; and  
(c) Provided to members of the general public through public information channels.

(5) A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the Office of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(6) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer at least three (3) working days prior to the scheduled date of the hearing.

(7) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;  
2. Identify additional information and evidence needed for the hearing; and  
3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or  
2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:  
a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(8) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons



wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

- (a) Notice of Appearance, Form #3;
- (b) Witness List, Form #4; and
- (c) Exhibit List, Form #5 and attached exhibits.

(9) (a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

- 1. File a new Notice of Appearance, Form #3; and
- 2. Either:

a. Incorporate previously-filed witness lists (Form #4) and exhibit lists (Form #5); or

- b. File amended Forms #4 and #5.

(b) A new party to the hearings shall file original Forms #3, #4 and #5.

(c) Forms shall be filed in accordance with subsection (8) of this section.

(10) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(11) Each party shall have the opportunity to:

- (a) Present its case;
- (b) Make opening statements;
- (c) Call and examine witnesses;
- (d) Offer documentary evidence into the record;
- (e) Make closing statements; and
- (f) Cross-examine opposing witnesses on:

- 1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(12) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(13) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and

(c) Question any party or witness.

(14) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer.

(15) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(16) Witnesses shall be examined under oath or affirmation.

(17) Witnesses may, at the discretion of the hearing officer:

- (a) Appear through deposition or in person; and
- (b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(18) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and other parties at least:

1. Seven (7) working days before the hearing for formal review applications; or

2. Five (5) working days for nonsubstantive review appli-

cations.

(19) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(20) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(21) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(22) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(23) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

[Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) Unless otherwise specified herein, all hearings shall be conducted pursuant to this section.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of any nonsubstantive review hearing and not less than ten (10) business days prior to the date of any other hearing;

(b) Published in the Certificate of Need newsletter if applicable; and

(c) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the Division of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any motion, including a motion for summary judgment or a motion to dismiss, which, if sustained, would eliminate the need for a hearing, shall be filed and delivered to all opposing parties at least three (3) days prior to any nonsubstantive review hearing and at least three (3) business days prior to any other hearing. This shall not preclude a party from making a dispositive motion at the hearing based on facts or issues arising at or during the hearing.

(6) Except as specified in Section 18 of this administrative regulation, any party that files any materials or items, including pleadings, with the Division of Certificate of Need, shall also deliver a copy to all opposing parties by personal service, facsimile, or electronic mail as well as by mail.

(7) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference, or

2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to

be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(8) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) business days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and deliver copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;

(b) Witness List, Form #4; and

(c) Exhibit List, Form #5 and attached exhibits.

(9) (a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new Notice of Appearance, Form #3, and

2. Either

a. Incorporate previously filed witness lists (Form #4) and exhibit lists (Form #5); or

b. File amended Forms #4 and #5.

(b) A new party to the hearings shall file original Forms #3, #4 and #5.

(c) Forms shall be filed in accordance with subsection (8) of this section.

(10) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(11) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing, including determining the manner or form in which evidence may be presented as well as imposing reasonable and appropriate limits on the time allotted to each party to present their respective cases.

(12) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(13) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed; and

(b) Question any party or witness.

(14) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer. The hearing officer shall prohibit and exclude evidence or information which is irrelevant, immaterial, or unduly repetitious.

(15) Testimony presented at the hearing shall be done so under oath or by affirmation. Witnesses shall be examined under oath or affirmation.

(16) Each party shall have the opportunity to present its case in the following manner:

(a) Make opening statements, with each party limited to twenty (20) minutes each;

(b) Introduce direct testimony of relevant, pertinent witnesses, with all testimony also submitted in writing;

(c) Offer documentary evidence into the record;

(d) Make closing statements, with each party limited to twenty (20) minutes each; and

(e) Conduct reasonable cross-examination of opposing witnesses on:

1. Matters covered in direct examination; and

2. Other matters which the hearing officer determines are relevant, pertinent, and productive in resolving the disputed issues.

(17) The direct testimony of witnesses shall be presented in the following manner:

(a) In writing;

(b) In the form of questions and answers or a narrative statement;

(c) Sworn or attested to under the penalty of perjury; and

(d) With all individuals available at the time of the hearing for purposes of cross-examination.

(18) At least five (5) days prior to any nonsubstantive hearing, the direct testimony of all witnesses shall be filed and delivered to all parties. At least three (3) days prior to a nonsubstantive hearing, objections to any portion of the proposed direct testimony shall be filed and delivered to all parties.

(19)(a) At least seven (7) business days prior to any other type of hearing, the party that bears the burden of proof shall file and deliver to opposing parties the written direct testimony of all witnesses they intend to introduce at the hearing.

(b) At least four (4) business days prior to the hearing, the opposing parties shall file and deliver the written direct testimony of all witnesses they intend to introduce at the hearing as well as objections to any portion of the proposed direct testimony previously filed.

(c) At least two (2) business days prior to the hearing, the party that bears the burden of proof shall file and deliver objections to any portion of the proposed direct testimony submitted by the other parties.

(20) Failure to make available an individual for purposes of cross-examination shall result in that party not being permitted to offer any written direct testimony from that individual.

(21) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and delivered to other parties at least:

1. Five (5) days prior to a nonsubstantive review hearing; or

2. Seven (7) business days prior to any other hearing.

(22) Other than the Certificate of Need application and other items submitted, a document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(23) The hearing officer may take official notice of facts which are not in dispute, or of generally recognized technical or scientific facts within the agency's special knowledge.

(24) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(25) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B-062(1) and 216B-095(1).

(26) The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.

(27) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.]

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with Section 18 of this administrative regulation.

(2) A copy of the request for reconsideration shall be served by

the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted A hearing shall be held by the cabinet in accordance with the applicable provisions of Section 16 or 18 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(7)(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988)*, in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

(b) Is subject to the penalties provided by KRS 216B 990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of their certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9)(a) Except as provided by paragraph (b) or (c) of this subsection, if it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her findings of fact and proposed decision on

whether the evidence has established the following:

1. The practice claiming the exemption is 100 percent owned in any organizational form recognized by the Commonwealth by the individual physician, dentist, or other practitioner of the healing arts or group of physicians, dentists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

2. The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

3. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

4. A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption is responsible for all decisions regarding the care and treatment provided to patients;

5. Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

6. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

7. Major medical equipment in excess of the limits set forth in 900 KAR 6 030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

8. Nothing in this section shall limit or prohibit the continued operation of an office or clinic which was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

a. Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office or clinic;

b. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

c. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(b) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

1. Compliance with paragraph (a)1, 4, 5, and 6 of this subsection;

2. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

3. The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(c) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

1. The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

2 a. The office was established and in operation prior to January 31, 2006;

b. The office does not provide any services or equipment covered by the State Health Plan; or

c. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each

hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need newsletter if applicable.

(13) At least seven (7) business days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a certificate of need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, (Form #3);

(b) Witness List, (Form #4); and

(c) Exhibit List, (Form #5) and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.

**Section 19. Administrative Escalations.** (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits if there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or \$100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects if the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999,

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, if the capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999; and

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, if the capital expenditure authorized on the certificate of need is \$50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:

(a) Constitute a substantial change in a project; and

(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be:

(a) Presumed to be a willful violation of KRS Chapter 216B, and

(b) Subject to the penalties set forth at KRS 216B.990(2).

**Section 20. Timetables and Standards for Implementation.** (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #8, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall determine:

(a) If the required elements have been completed; and

(b) If the required elements have not been completed, if sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Office of Inspector General; and

(b) A final cost breakdown has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that:

(a) The failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder; or

(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (6) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment: plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; or

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Office of Inspector General or the Kentucky Board of Emergency Medical Services; or

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;  
2. Documentation of final enforceable financing agreement, if applicable;

3. Documentation that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General; and

4. Enforceable contract with a construction contractor; or

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Office of Inspector General.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; or

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Office of Inspector General.

(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown if

the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.

(20) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(21) If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with Section 18 of this administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine if they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review shall be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of, and any sanctions for, this violation shall be conducted in accordance with Section 18(4) of this administrative regulation.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion, Form #7.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a non-clinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition or Establishment of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required to include ICF/MR respite beds, or add equipment for which there are review criteria in the State Health Plan but for which a certificate of need is not required, shall notify the cabinet that a service or equipment has been added within ten (10) days of addition.

(2) Notice of Addition of a Health Service or Equipment (Form #10) shall be used in making the notification.

Section 24. Certification of Continuing Care Retirement Communities. (1) In order to be certified as a continuing care retirement

community, a certificate of compliance shall be obtained from the Division of Certificate of Need.

(2) In order to obtain a certificate of compliance, a continuing care retirement community shall complete and file Form #11 thereby certifying that:

(a) All residents shall have a written agreement with the continuing care retirement community;

(b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;

(c) None of the health facilities or health services established by the continuing care retirement community under this section shall apply for or become certified for participation in the Medicaid Program, and that this restriction shall be disclosed in writing to each of its residents;

(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care retirement community under this section, and that this restriction shall be disclosed in writing to its residents;

(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;

(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;

(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;

(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or the resident's guardian;

(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;

(j) The continuing care retirement community shall share information on alternative living arrangements provided by the Division of Aging Services at the time a move-out notice is given to a resident; and

(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3) The Division of Certificate of Need shall issue a certificate of compliance within thirty (30) days of receipt of a completed Form #11 if all conditions are met. If all conditions are not met, the cabinet shall advise the applicant of any deficiencies. Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Division of Certificate of Need the payor source for each of its nursing home beds.

(7) Upon request, the continuing care retirement community shall provide the Division of Certificate of Need the number of each type of bed or living unit within the continuing care retirement community.

**Section 25. Critical Access Hospitals.** A certificate of need shall not be required for a critical access hospital to reestablish the number of acute care beds that the hospital operated prior to becoming a critical access hospital if the hospital decides to discontinue operating as a critical access hospital.

**Section 26. Swing Beds.** (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R. 482.66 or 485.645, shall not be required to obtain a certificate of need to utilize its licensed acute or critical access hospital beds as swing beds.

(2) For a designated swing bed hospital to add new acute or critical access hospital beds which may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval shall be required.

**Section 27. Pilot Angioplasty Program.** The provisions of this section shall apply to the pilot project for primary angioplasty in hospitals without on-site open heart surgery ("pilot program") established in the 2004-2006 State Health Plan. (1) Hospitals participating in the pilot program shall immediately (within twenty-four (24) hours of the event or on the first business day following the event) report the following events to the Division of Certificate of Need by fax at (502) 564-0302 or e-mail (joni.crcraft@ky.gov):

(a) Death within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. The report shall indicate if the death was a "cardiac death" or a "noncardiac death".

1. A death shall be considered a "cardiac death" if the death was due to any of the following:

a. Acute myocardial infarction;

b. Cardiac perforation/pericardial tamponade;

c. Arrhythmia or conduction abnormality;

d. Cerebrovascular accident related to, or suspected of being related to, the cardiac catheterization procedure. An event shall be considered to be a "cerebrovascular accident" if there were acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred:

(i) During the index catheterization; or

(ii) During the index hospitalization;

e. Death due to complication of the procedure including bleeding, vascular repair, transfusion reaction, or bypass surgery; or

f. Any death in which a cardiac cause could not be excluded.

2. A death shall be considered a "noncardiac death" if the death was not due to cardiac causes as described in subparagraph 1 of this paragraph;

(b) Emergency coronary artery bypass surgery (CABG) within twenty-four (24) hours of the procedure or hospital discharge. An event shall be considered to be an "emergency" if there is a sudden and often life-threatening mishap that arises in the course of, and as a result of, the performance of a cardiac catheterization or angioplasty procedure. It shall not include patients either transferred directly from the cardiac catheterization procedure room or taken within twenty-four (24) hours to the operating room for surgical correction of emergent/life threatening cardiac disease; or

(c) Shock within twenty-four (24) hours of the procedure or hospital discharge.

(2) Hospitals participating in the pilot program shall report to the Division of Certificate of Need in writing within seven (7) days, any of the following events:

(a) Cerebrovascular accident, which are acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred within thirty (30) days after the catheterization but were not clearly related to the procedure;

(b) Any intracranial bleed within thirty (30) days of the cardiac catheterization procedure;

(c) Recurrent Q wave or Non-Q wave Myocardial Infarction (MI) during the initial hospitalization; or

(d) Vascular complications which occur within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. These shall include:

1. Hematoma more than four (4) centimeters;

2. Retroperitoneal Bleed;

3. False Aneurysm;

4. AV fistula;

5. Peripheral ischemic/nerve injury; or

6. Hemolysis and Hemolytic anemia.



(3) Hospitals participating in the pilot program shall:

(a) Establish a Joint Performance Improvement Committee (Joint PI Committee) with its collaborating tertiary hospital or with practicing interventional cardiologists. The membership of the Joint PI Committee shall, at a minimum, include each of the following disciplines: physicians, nurses and administrators from both the pilot program hospital and the collaborating tertiary hospital;

(b) Convene the Joint PI Committee at least quarterly but sooner if twenty-five (25) patients have been treated to review the care provided to patients under the pilot program. This review process shall focus on patient outcomes and, at a minimum, include:

1. An assessment of the appropriateness of the selection of each patient entered into the pilot program;

2. All complications, any adverse outcomes, number of the patients requiring and reason for transfer to a tertiary facility;

3. The technical quality of the catheterization and angioplasty procedures performed; and

4. The "door to cath lab time" and "door to treatment time";

(c) Develop and implement a plan of correction for any problems identified;

(d) Develop a process for including the findings of the Joint PI Committee's review in the pilot program hospital's performance improvement program;

(e) Require the Joint PI Committee to make a quarterly recommendation to the Division of Certificate of Need whether the pilot program should continue; and

(f) Require all staff (including, at a minimum, interventional cardiologists, nurses and technicians) as well as representatives of the Emergency Department and Critical Care Unit staffs participating in the pilot program PI process, to attend a minimum of one (1) meeting of the Joint PI Committee per year.

(4) Performance of primary angioplasty (as measured by quality indicators including mortality, morbidity, and adverse reactions) at a pilot hospital shall be comparable, on a risk adjusted basis, to the performance of existing angioplasty programs in Kentucky and with similar organizations nationally, according to the National Cardiovascular Data Registry.

(a) If the outcomes are worse at a pilot hospital, that facility shall file and implement a plan of correction with the Division of Certificate of Need.

(b) If the facility's results do not improve after one (1) quarter of implementing a plan of correction, the Division of Certificate of Need may terminate the facility's participation in the pilot program.

(5) Hospitals participating in the pilot program shall:

(a) Continue to make available the cardiac catheterization service twenty-four (24) hours per day and seven (7) days per week;

(b) Develop policies and procedures that will assure that all interventional cardiologists performing primary angioplasty procedures at the pilot program hospital will maintain an appropriate level of proficiency as a member of the team performing primary angioplasty at the pilot program hospital. The policies and procedures shall detail the process the physician director will utilize to assure the establishment, maintenance and monitoring of the proficiency of each interventional cardiologist;

(c) Maintain a collaborative association and a current, valid collaboration agreement with a tertiary hospital including Joint PI and staff education programs; and

(d) Perform a minimum of thirty-six (36) primary angioplasty procedures per year. At least thirty (30) of these angioplasty procedures shall be primary angioplasty procedures, excluding patients that have "rescue angioplasty" procedures performed.

(6) The time frame for measuring compliance with procedural utilization requirements shall begin six (6) months after the date of the physician director's notification to the Division of Certificate of Need that all training requirements have been fulfilled. Within twelve (12) months from the "start date," the hospital shall have performed eighteen (18) primary angioplasty procedures or shall receive a warning that approval to participate in the pilot program may be withdrawn.

(7) Within the following six (6) months, a total of eighteen (18) months from the date of the department's letter of approval, the hospital shall have performed at least another eighteen (18) proce-

dures (a total of thirty-six (36) primary angioplasty procedures) or the program may be discontinued at that site.

(8) Each site shall continue to perform eighteen (18) primary angioplasty procedures per six (6) months and a total of thirty-six (36) primary angioplasty procedures per year, or the program may be discontinued at that site.

(9) All physicians performing percutaneous coronary intervention (PCI) at a pilot program hospital shall:

(a) Continue to perform no fewer than 100 cardiac catheterization procedures per year (total diagnostic and therapeutic). At least seventy-five (75) procedures shall be angioplasty procedures unless the procedures are being performed at a facility at which more than 400 angioplasty procedures are being performed per year; and

(b) Maintain credentials at a hospital at which that operator performs elective angioplasty procedures.

(10)(a) All staff that are hired after the completion of the initial training at the pilot program hospital shall complete a training program that mirrors the initial training program. The relevant collaborating tertiary and pilot program hospitals shall develop this training program.

(b) Training of all staff including, at a minimum, all interventional cardiologists, nurses and technicians, shall be performed on the Intra-aortic balloon pump annually.

(c) All staff involved in providing PCI, including the interventional cardiologists, nurses and technicians, shall have a current Advanced Cardiac Life Support (ACLS) certification.

(d) Inservice programs shall, at a minimum, be based upon need identified through staff evaluations and quality assurance process.

(11) The Division of Certificate of Need may discontinue the pilot program at a participant hospital at any time after reviewing the following:

(a) Quarterly reports made by the American College of Cardiology - National Cardiovascular Data Registry (ACC-NCDR);

(b) Records obtained through an audit;

(c) Peer review reports; or

(d) Reports on serious adverse events.

(12) Upon notification to the hospital by the Division of Certificate of Need, the hospital shall terminate the pilot program and cease to perform primary angioplasty procedures.

(13) In order to assist the Division of Certificate of Need in evaluating the pilot program, the performance of pilot hospitals, and the formulation of recommendations for continuing or modifying the project, the Division of Certificate of Need may collaborate with university based researchers to:

(a) Evaluate and compare performance data of pilot hospitals with existing Kentucky angioplasty programs; and

(b) Conduct an evaluation of the short- and long-term outcomes of patients undergoing primary angioplasty at pilot hospitals with those patients transferred to hospitals with open heart surgical backup.

(14) The Division of Certificate of Need shall review reports from the collaborating university based researchers as well as quarterly reports made by the ACC-NCDR, records obtained through audit, peer review reports and reports of serious adverse events in order to develop recommendations for continuing, discontinuing, or modifying the pilot program. If the project is continued, these recommendations shall include establishing criteria for determining need to expand angioplasty services to additional hospitals without on-site surgical backup, qualifications of those hospitals, and ongoing requirements for a hospital's continued provision of this service.

(15) The Division of Certificate of Need may convene all hospitals participating in the pilot program on a regular basis for the purpose of discussing and assessing the status of the implementation of the pilot program.

(16) Three (3) years from the start date of the pilot program, the Division of Certificate of Need shall publish a report on the program. The report shall:

(a) Indicate whether it is in the best interest of the commonwealth to eliminate the requirement for open heart surgery for hospitals to perform therapeutic cardiac catheterization; and

(b) The requirements for patient selection, procedural volume,



and staffing that hospitals shall continue to meet to provide this service if the Division of Certificate of Need finds that this service may be provided by hospitals in the absence of on-site open heart surgery.

Section 28. Magnetic Resonance Imaging Report. (1) A Magnetic Resonance Imaging unit (MRI) utilized in the Commonwealth shall be disclosed to the Cabinet for Health and Family Services, Office of Health Policy for publication in the Kentucky Annual Magnetic Resonance Imaging Services Report.

(2) the following information shall be submitted about every MRI unit utilized in the Commonwealth:

- (a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;
- (b) Identification of designated contact person or authorized agent of each facility;
- (c) Make, model, and serial number of each unit;
- (d) Date the unit became operational at each site;
- (e) Whether the unit is free-standing or mobile (if the unit is mobile, then also identify the number of days the unit is operational); and
- (f) Number of scans performed during the previous calendar year.

(3) The owner or operator of any MRI unit that becomes operational at an unlicensed facility after August 1, 2006, shall have thirty (30) days after use of the unit is commenced to provide the information required by subsection (2) of this section.

(4) The information shall be provided by completion of "The Annual Survey of Magnetic Resonance Imaging Services" be obtained, completed, and transmitted electronically by accessing the Office of Health Policy's Web site at <http://chfs.ky.gov/ohp/con>. A copy can also be obtained at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 3CB, Frankfort, Kentucky 40621.

(5) Within thirty (30) days of an event, the designated contact person or authorized agent shall notify the Office of Health Policy about any change in the facility's address or the addition of another MRI unit as well as the discontinuation of any units.

Section 29. [30] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Letter of Intent", (Form #1) (10/12/99);
- (b) "Certificate of Need Application", (Form #2A) (3/6/03);
- (c) "Certificate of Need Application for Ground Ambulance Providers", (Form #2B) (6/15/99);
- (d) "Certificate of Need Application for Change of Location, Replacement, or Cost Escalation", (Form #2C) (3/6/03);
- (e) "Notice of Appearance", (Form #3) (3/6/03);
- (f) "Witness List", (Form #4) (3/6/03);
- (g) "Exhibit List", (Form #5) (3/6/03);
- (h) "Cost Escalation Form", (Form #6) (6/15/99);
- (i) "Request for Advisory Opinion", (Form #7) (3/6/03);
- (j) "Six (6) Month Progress Report", (Form #8) (6/15/99);
- (k) "Acquisition of a Health Facility, Notice of Intent to Acquire (Form #9)", (3/6/03);
- (l) "Notice of Addition of a Health Service or Equipment", (Form #10) (6/15/99);
- (m) "Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", (Form #11) (11/29/00); and
- (n) "Annual Survey of Magnetic Resonance Imaging Services", (5/12/06).

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

SHAWN E. CROUCH, Chief of Staff  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: June 11, 2007

FILED WITH LRC: June 12, 2007 at 4 p.m.

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: Shane O'Donley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the process by which the Certificate of Need program shall be implemented.

(b) The necessity of this administrative regulation: Pursuant to KRS 216B.040, the cabinet may promulgate administrative regulations to establish the certificate of need review procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B.040 which requires the cabinet implement a Certificate of Need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will update the regulation to modify current review procedures in an effort to improve administrative efficiency.

(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 provide for the following changes:

1. Replace an existing non-substantive review category with a new category;

2. Restore the previous administrative hearing process;

3. Modify the emergency circumstances notification process;

4. Clarify the decision date for reconsideration hearings; and

5. Various corrections of technical errors within the regulation.

(b) The necessity of the amendment to this administrative regulation: To improve the efficiency and effectiveness of the current certificate of need process.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B.040 which requires the cabinet promulgate administrative regulations to establish the certificate of need review procedures.

(d) How the amendment will assist in the effective administration of the statutes: It will improve the efficiency and effectiveness of the current certificate of need process and improve access to affordable quality healthcare for the citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who may benefit from improved access to quality, affordable healthcare.

(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 further action will be required by current licensed or certificate of need approved healthcare facilities or services.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals who utilize healthcare may benefit from improved access to quality, affordable healthcare.

(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: Certificate of Need 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 modifications to this administrative regulation will not necessitate additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No additional fees will be created.

(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 may impact admissions to government owned or controlled acute care hospitals.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 authorizes the Cabinet for Health and Family Services to perform any certificate-of-need function and other statutory functions necessary to improve the quality and increase access to health care facilities, services and providers, and to deliver a cost-efficient health-care delivery system for the citizens of the Commonwealth. KRS 216B.095 (3)(f) authorizes the Cabinet for Health and Family Services to grant nonsubstantive review status to an application for a certificate-of-need pursuant to the Cabinet's administrative regulations.

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 (+/-): None

Expenditures (+/-): None

Other Explanation: N/A

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 2007

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**  
**Division of Student and Administrative Services**  
**(Amendment)**

**11 KAR 3:100. Administrative wage garnishment.**

RELATES TO: KRS 164.744(1), 164.748(4), (10), (20), 164.753(2), 34 C.F.R. 682.410(b)(9), 20 U.S.C. 1071-1087-2, 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20 U.S.C. 1095a

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 U.S.C. 1071 through 1087-2. 20 U.S.C. 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(10) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(20) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;

(e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgment by the debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding; or

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding

(e) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;

2. Any prehearing order;

3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proffers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;

7. A recording or transcript of the proceedings; and  
 8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition of review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;

2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and

3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and

- 2.a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;

- b. Reject or modify, in whole or in part, the hearing officer's decision; or

- c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

- (i) In violation of constitutional or statutory provisions;
- (ii) In excess of the statutory authority of the agency;
- (iii) Without support of substantial evidence on the whole record;
- (iv) Arbitrary, capricious, or characterized by abuse of discretion; or

tion; or

- (v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:

- (a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and

- (b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue subpoena for the production of a document or attendance of a witness.

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

- a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;

- b. Discuss the possibility of informal resolution of the dispute;

- c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and

- d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3 a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in this subsection.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d)1. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:

1. Noncompliance with this subsection;
2. Failure of the authority to:
  - a. Timely appoint a hearing officer; or
  - b. Respond to a request for inspection of records; or
3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;
2. Identify the parties to the action and the persons participating;

3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;

4. Solicit from the parties and dispose of any objections or motions;

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.

1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:

- a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
- b. It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:

1. May take official notice of:
  - a. Statutes and administrative regulations;
  - b. Facts which are not in dispute; and
  - c. Generally-recognized technical or scientific facts;
2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and
3. Shall give each party an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have

the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4.030 or 11 KAR 4.050, the hearing officer:

(a) Shall:

1. Consider the matter; and
2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

- a. Substantially disregarded or ignored the defense; or
- b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial

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hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$10,210[\$9,800]
2	\$13,690[\$13,200]
3	\$17,170[\$16,600]
4	\$20,650[\$20,000]
5	\$24,130[\$23,400]
6	\$27,610[\$26,800]
7	\$31,090[\$30,200]
8	\$34,570[\$33,600]
Each additional person	Add \$3,480[\$3,400]

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	\$12,770[\$12,250]
2	\$17,120[\$16,600]
3	\$21,470[\$20,750]
4	\$25,820[\$25,000]
5	\$30,170[\$29,250]
6	\$34,520[\$33,600]
7	\$38,870[\$37,750]
8	\$43,220[\$42,000]
Each additional person	Add \$4,350[\$4,250]

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	\$11,750[\$11,270]
2	\$15,750[\$15,180]
3	\$19,750[\$19,090]
4	\$23,750[\$23,000]
5	\$27,750[\$26,910]
6	\$31,750[\$30,820]
7	\$35,750[\$34,730]
8	\$39,000[\$38,640]
Each additional person	Add \$4,000[\$3,910]

2.a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
<b>Annual Expenditures</b>									
Owned dwelling	1,647	903	1,694	2,905	2,593	3,949	4,743	6,781	12,818
Rented dwelling	2,768	3,089	3,341	3,082	3,707	3,425	3,097	2,767	1,732
Other lodging	148	65	44	85	197	237	329	421	1,382
Utilities, fuels, and public services	1,352	1,499	1,883	2,387	2,596	2,805	3,146	3,548	4,590
Household services	238	190	566	341	526	445	432	610	1,477
Housekeeping and miscellaneous supplies	304	287	275	234	396	415	545	594	1,010
Household furnishing and equipment	758	335	407	540	733	966	1,086	1,458	3,031
Vehicle purchases (net outlay)	949	438	895	1,115	2,082	1,666	2,690	3,805	5,172
Gasoline and motor oil	605	515	567	742	996	1,262	1,605	1,890	2,436
Vehicle maintenance and repairs	306	328	231	276	425	373	513	692	995
Vehicle insurance	275	306	327	554	675	744	943	1,111	1,556
Vehicle lease, license, and other charges	160	103	118	144	194	286	370	570	1,173

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Public transportation	255	176	206	218	359	374	464	468	1,266
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Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
<b>Annual Expenditures</b>									
Owned dwelling	1,061	1,069	1,539	2,583	2,529	3,660	4,891	6,421	12,458
Rented dwelling	2,756	2,925	3,333	2,887	3,526	3,416	2,673	2,660	1,867
Other lodging	75	101	72	103	160	210	325	546	1,310
Utilities, fuels, and public services	1,103	1,454	1,833	2,223	2,438	2,735	2,962	3,326	4,257
Household services	168	231	788	336	674	385	441	544	1,650
Housekeeping and miscellaneous supplies	369	248	299	366	417	469	515	583	945
Household furnishing and equipment	766	337	437	551	858	1,068	1,261	1,568	3,108
Vehicle purchases (net outlay)	531	634	1,018	1,163	1,674	2,095	2,642	4,785	6,238
Gasoline and motor oil	403	381	464	626	846	1,072	1,305	1,656	2,011
Vehicle maintenance and repairs	207	193	199	310	393	403	495	746	1,001
Vehicle insurance	224	294	343	521	653	756	1,012	1,164	1,578
Vehicle lease, license and other charges	132	101	110	235	290	238	452	578	1,135
Public transportation	259	228	243	234	425	388	410	567	1,149

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	New York	Philadelphia	Boston	Pittsburgh
Owned dwellings	8,277	6,344	7,882	4,454
Rented dwellings	4,245	2,470	2,899	1,524
Other lodging	749	475	583	451
Utilities, fuels, and public services	3,528	3,600	3,169	3,103
Household services	957	687	917	563
Housekeeping and miscellaneous supplies	579	628	684	549
Household furnishings and equipment	1,730	1,709	1,670	1,386
Vehicle purchases (net outlay)	2,316	3,802	3,759	3,307
Gasoline and motor oil	1,495	1,477	1,747	1,538
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,716	2,310	2,502	2,218
Public transportation	1,054	495	579	393

	New York	Philadelphia	Boston	Pittsburgh
Owned dwellings	8,146	6,240	6,882	4,314
Rented dwellings	4,199	2,248	3,199	1,573
Other lodging	710	526	477	435
Utilities, fuels, and public services	3,248	3,312	2,822	2,964
Household services	1,067	674	903	559
Housekeeping and miscellaneous supplies	547	535	653	528
Household furnishings and equipment	1,799	1,664	1,403	1,649
Vehicle purchases (net outlay)	2,672	3,623	3,443	2,483
Gasoline and motor oil	1,198	1,243	1,299	1,266
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,722	2,347	2,128	2,360
Public transportation	1,007	465	629	379

3 a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
<b>Annual Expenditures</b>									
Owned dwelling	2,090	944	1,613	2,096	2,642	3,612	4,910	6,005	10,883
Rented dwellings	2,171	2,337	2,280	2,350	2,186	2,094	1,759	1,449	593
Other lodging	224	128	119	111	181	245	289	484	1,260
Utilities, fuels and public services	1,514	1,495	2,044	2,216	2,562	2,829	3,020	3,396	4,226



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Household operations services	208	157	293	332	408	429	554	676	1,515
Housekeeping and miscellaneous supplies	276	192	315	396	361	504	554	750	1,032
Household furnishings and equipment	459	495	382	614	792	1,220	1,523	1,779	3,473
Vehicle purchases (net outlay)	1,509	803	912	705	2,182	2,242	2,756	4,535	5,599
Gasoline and motor oil	730	623	856	1,094	1,265	1,572	1,746	2,158	2,764
Vehicle maintenance and repairs	218	179	372	329	427	659	572	754	1,018
Vehicle insurance	245	277	435	446	660	742	903	1,055	1,384
Vehicle lease, license, and other charges	158	90	140	230	247	375	432	563	1,041
Public transportation	247	127	100	107	154	189	221	371	804

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$59,999	\$70,000 and over
<b>Annual Expenditures</b>									
Owned dwelling	1,739	941	1,660	2,578	2,460	3,335	4,355	6,210	10,135
Rented dwelling	2,168	2,383	2,305	2,258	2,414	2,043	1,752	1,408	580
Other lodging	226	134	112	126	188	211	296	460	1,263
Utilities, fuels and public services	1,448	1,627	2,040	2,240	2,497	2,701	2,905	3,315	3,980
Household operations services	237	427	275	277	368	402	443	698	1,464
Housekeeping and miscellaneous supplies	189	236	383	425	410	667	683	747	1,026
Household furnishings and equipment	354	391	411	559	904	1,205	1,383	1,906	3,596
Vehicle purchases (net outlay)	1,561	933	1,155	1,194	2,420	2,612	3,218	4,194	6,723
Gasoline and motor oil	710	609	709	948	1,065	1,371	1,563	1,860	2,272
Vehicle maintenance and repairs	190	222	322	345	423	600	648	762	1,061
Vehicle insurance	262	248	454	536	670	789	946	1,060	1,445
Vehicle lease, license, and other charges	170	428	125	181	255	381	375	616	1,099
Public transportation	247	435	109	147	194	165	245	383	842

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Chicago	Detroit	Minneapolis St. Paul	Cleveland	St. Louis
<b>Annual Expenditures</b>					
Owned dwelling	8,510	7,389	8,463	5,333	5,568
Rented dwelling	2,138	1,462	1,896	1,613	1,494
Other lodging	792	805	886	614	558
Utilities, fuels, and public services	3,541	3,511	3,070	3,412	3,251
Household services	1,063	864	1,126	434	921
Housekeeping and miscellaneous supplies	792	568	810	570	581
Household furnishings and equipment	2,124	1,890	3,090	1,373	2,035
Vehicle purchases (net outlay)	4,013	2,914	3,140	2,056	4,095
Gasoline and motor oil	1,754	2,129	1,853	1,449	1,853
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,464	3,759	2,826	2,328	2,287
Public transportation	644	444	731	263	415

	Chicago	Detroit	Milwaukee	Minneapolis St. Paul	Cleveland	Cincinnati	St. Louis	Kansas City
<b>Annual Expenditures</b>								
Owned dwelling	7,840	6,588	6,228	7,662	5,271	4,654	5,621	6,236
Rented dwelling	2,225	1,622	2,287	2,188	1,581	2,877	1,662	2,001
Other lodging	672	720	477	957	385	515	631	388
Utilities, fuels, and public services	3,383	3,070	2,790	2,928	3,287	2,685	3,178	3,419
Household services	1,066	823	497	950	384	563	937	713
Housekeeping and miscellaneous supplies	731	552	664	748	460	513	485	853
Household furnishings and equipment	2,198	1,635	1,632	2,960	1,248	1,766	1,826	2,518

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Vehicle purchases (net outlay)	3,618	3,473	3,261	3,878	2,744	3,317	4,737	3,996
Gasoline and motor oil	1,449	1,639	1,444	1,610	1,244	1,400	1,450	1,689
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,446	3,403	2,028	2,972	2,515	2,242	2,391	2,599
Public transportation	667	460	412	742	250	309	400	234

4 a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Owned dwelling	1,651	1,017	1,398	1,676	2,161	3,228	4,049	5,210	10,421
Rented dwelling	2,044	1,912	1,936	2,183	2,364	2,368	2,098	1,858	1,092
Other lodging	211	82	80	69	144	181	212	266	924
Utilities, fuels, and other charges	1,756	1,819	2,264	2,442	2,652	2,913	3,186	3,408	4,312
Household services	183	174	284	317	423	490	576	745	1,569
Housekeeping and miscellaneous supplies	304	246	304	412	394	466	539	613	910
Household furnishings and equipment	662	368	619	711	812	1,160	1,312	1,489	3,207
Vehicle purchases (net outlay)	433	674	770	1,332	2,569	2,941	3,338	4,642	5,985
Gasoline and motor oil	894	727	954	1,147	1,456	1,791	1,956	2,233	2,744
Vehicle maintenance and repairs	206	204	237	530	439	452	523	629	1,024
Vehicle insurance	301	264	433	623	729	885	978	1,138	1,425
Vehicle lease, license, and other charges	114	66	65	120	192	240	210	305	577
Public transportation	78	78	67	95	130	156	216	253	715

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Owned dwelling	1,311	1,202	1,204	1,715	2,429	3,216	4,125	6,168	10,068
Rented dwelling	1,992	1,828	1,981	2,122	2,300	2,369	1,934	1,702	1,096
Other lodging	74	63	74	63	112	170	222	311	963
Utilities, fuels, and other charges	1,544	1,735	2,174	2,282	2,558	2,735	3,092	3,315	4,194
Household services	135	131	246	423	408	461	554	754	1,461
Housekeeping and miscellaneous supplies	310	252	286	379	386	467	486	565	992
Household furnishings and equipment	647	389	496	653	823	1,011	1,320	1,416	3,125
Vehicle purchases (net outlay)	614	627	1,437	1,618	2,452	3,198	3,390	5,206	6,715
Gasoline and motor oil	746	613	790	1,022	1,218	1,419	1,591	1,838	2,249
Vehicle maintenance and repairs	236	217	249	544	421	486	598	674	982
Vehicle insurance	289	280	481	620	770	848	1,010	1,163	1,476
Vehicle lease, license, and other charges	413	83	72	108	194	227	246	358	586
Public transportation	95	63	67	112	125	161	183	250	698

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Washington, D.C.	Baltimore	Atlanta	Miami	Dallas Forth Worth	Houston
Owned dwelling	10,250	6,644	6,019	6,150	6,818	6,373
Rented dwelling	3,178	2,366	2,202	3,027	2,147	2,255
Other lodging	570	476	276	289	488	617
Utilities, fuels, and public services	3,618	2,944	3,430	3,140	3,833	3,877
Household services	1,326	614	717	741	929	1,067
Housekeeping and miscellaneous supplies	567	417	518	525	645	653
Household furnishings and equipment	2,015	1,253	1,184	936	1,845	1,767
Vehicle purchases (net outlay)	2,758	2,052	2,359	2,013	3,587	4,584
Gasoline and motor oil	1,726	1,541	1,695	1,633	1,982	2,249
Other vehicle expenses (repairs,	2,601	1,844	1,748	2,284	2,799	3,107

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insurance, lease, license, and other charges)						
Public transportation	790	363	242	353	469	386

	Washington, D.C.	Baltimore	Atlanta	Miami	Tampa	Dallas Fort Worth	Houston
Owned dwelling	8,644	6,102	6,383	6,685	5,561	6,065	5,417
Rented dwelling	2,958	2,036	2,024	2,155	1,889	2,528	2,719
Other lodging	689	610	376	321	350	616	379
Utilities, fuels, and public services	3,067	2,767	3,421	3,068	3,021	3,538	3,284
Household services	932	598	699	991	848	794	1,030
Housekeeping and miscellaneous supplies	648	588	401	524	398	559	585
Household furnishings and equipment	2,028	1,199	1,243	1,434	1,288	1,627	1,707
Vehicle purchases (net outlay)	3,374	1,852	3,610	3,709	3,546	4,939	5,243
Gasoline and motor oil	1,318	1,139	1,222	1,324	1,142	1,510	1,467
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,454	2,215	2,289	2,868	2,407	3,018	2,794
Public transportation	797	400	280	447	196	348	386

5 a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
<b>Annual Expenditures</b>									
Owned dwelling	1,617	995	1,899	2,041	2,830	3,686	4,947	7,193	13,321
Rented dwelling	3,102	3,372	3,589	3,882	4,338	4,088	3,935	3,046	2,108
Other lodging	322	237	204	257	196	216	277	461	1,277
Utilities, fuels, and public services	1,236	1,318	1,602	1,854	2,209	2,438	2,770	3,041	3,969
Household services	232	173	351	328	429	503	623	792	1,859
Housekeeping and miscellaneous supplies	297	228	352	496	393	561	543	677	895
Household furnishings and equipment	445	442	711	937	984	1,618	1,637	1,893	3,779
Vehicle purchases (net outlay)	754	1,125	1,282	1,524	2,387	2,904	3,533	4,858	7,722
Gasoline and motor oil	796	667	916	1,061	1,402	1,687	1,964	2,284	2,936
Vehicle maintenance and repairs	302	276	283	521	523	706	727	935	1,354
Vehicle insurance	306	302	410	515	704	916	1,087	1,182	1,484
Vehicle lease, license, and other charges	121	131	158	199	222	317	428	446	1,005
Public transportation	195	144	163	305	299	326	371	599	1,212

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
<b>Annual Expenditures</b>									
Owned dwelling	2,073	1,036	1,920	1,908	3,011	3,963	4,724	7,016	12,286
Rented dwelling	2,807	2,794	3,292	3,736	3,747	3,671	3,650	2,753	2,060
Other lodging	456	288	238	309	221	253	307	476	1,168
Utilities, fuels, and public services	1,411	1,264	1,585	1,773	2,086	2,377	2,669	2,988	3,776
Household services	262	161	376	399	435	521	613	789	1,828
Housekeeping and miscellaneous supplies	308	208	392	460	409	535	515	669	931
Household furnishings and equipment	617	452	880	942	1,059	1,392	1,613	2,195	3,474
Vehicle purchases (net outlay)	1,477	1,220	1,418	1,461	2,683	3,215	3,413	5,214	7,009
Gasoline and motor oil	730	616	812	1,000	1,209	1,497	1,712	1,978	2,438
Vehicle maintenance and repairs	362	287	312	592	573	737	840	954	1,333
Vehicle insurance	334	319	412	581	725	944	1,051	1,191	1,507
Vehicle lease, license, and other charges	262	89	178	171	273	316	412	553	1,097
Public transportation	190	128	183	263	353	394	383	588	1,110

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Los Angeles	San Francisco	San Diego	Portland	Seattle	Honolulu	Anchorage	Phoenix	Denver
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Owned dwelling	8,122	10,068	9,118	6,650	7,144	6,516	7,814	5,911	6,613
Rented dwelling	4,383	4,928	4,627	2,535	2,737	3,960	2,850	2,100	2,936
Other lodging	524	951	767	677	860	411	727	402	530
Utilities, fuels, and public services	2,908	2,711	2,767	2,878	2,769	2,813	3,228	3,057	3,013
Household services	1,224	1,384	1,561	933	725	692	985	984	722
Housekeeping and miscellaneous supplies	632	634	646	553	706	817	771	605	548
Household furnishings and equipment	2,119	2,210	1,999	1,813	2,541	2,191	2,388	1,659	1,411
Vehicle purchases (net outlay)	4,996	3,347	5,681	3,964	3,897	4,768	6,082	5,490	3,529
Gasoline and motor oil	2,312	1,922	2,094	1,742	1,914	1,658	2,157	1,769	1,755
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,029	3,296	2,587	2,542	2,813	2,427	3,239	2,911	2,573
Public transportation	635	953	939	596	867	1,069	1,119	380	789

	Los-Ange-les	San-Fran-cisco	San Diego	Portland	Seattle	Honolulu	Anchorage	Phoenix	Denver
Owned dwelling	7,378	9,229	7,576	6,038	7,011	5,629	7,329	5,743	6,314
Rented dwelling	4,114	4,662	4,690	2,597	2,638	4,160	2,977	2,266	3,001
Other lodging	663	746	777	728	732	535	506	366	475
Utilities, fuels, and public services	2,713	2,670	2,633	2,794	2,631	2,606	2,824	2,851	2,878
Household services	1,124	1,321	1,100	913	760	770	868	983	836
Housekeeping and miscellaneous supplies	662	645	723	573	681	593	740	474	587
Household furnishings and equipment	2,172	1,812	1,868	2,012	2,249	1,582	2,196	1,843	1,670
Vehicle purchases (net outlay)	4,006	3,441	4,532	2,845	4,204	4,356	5,129	5,612	3,583
Gasoline and motor oil	1,938	1,590	1,733	1,433	1,628	1,277	1,622	1,455	1,447
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,116	3,018	2,831	2,537	2,806	2,218	2,897	3,093	2,963
Public transportation	583	830	775	461	807	927	845	369	617

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	2,295	1,938	2,333	2,567	2,827	3,343	3,882	4,502	5,497
Apparel	814	504	536	644	733	1,043	1,171	1,671	2,592
Health insurance	339	556	1,018	1,077	1,001	875	969	877	1,107
Medical services	234	170	360	377	468	378	435	516	1,004
Prescription drugs	171	275	495	506	410	334	355	345	431
Medical supplies	36	44	60	69	64	88	70	88	144
Personal care products and services	202	189	244	287	336	371	472	490	703
Education	1,375	638	510	374	332	349	427	358	1,097
Life and other personal insurance	44	64	124	117	122	145	218	228	519

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	2,143	1,963	2,366	2,688	2,975	3,385	3,858	4,333	5,605
Apparel	546	542	507	716	797	1,026	1,216	1,616	2,524
Health insurance	312	607	1,069	989	878	824	860	827	1,029
Medical services	213	163	336	337	417	426	347	502	1,145
Prescription drugs	162	323	538	469	431	332	324	319	421
Medical supplies	35	54	60	73	60	102	76	83	161
Personal care products and services	205	189	276	314	367	377	483	525	661
Education	1,343	713	491	470	267	292	341	454	1,164
Life and other personal insurance	47	68	115	153	136	173	219	264	455

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

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Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
<b>Annual Expenditures</b>									
Food	4,099	3,384	3,578	3,654	4,152	3,624	5,366	5,838	8,301
Apparel	963	1,091	1,073	727	910	1,048	1,345	1,509	2,963
Health insurance	1,090	913	1,069	1,580	1,679	1,731	1,892	1,708	1,869
Medical services	82	77	55	101	96	136	116	165	177
Personal care products and services	312	220	272	353	419	446	548	618	941
Education	597	326	468	200	304	274	466	647	1,672
Life and other personal insurance	153	140	178	231	263	339	388	462	745

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
<b>Annual Expenditures</b>									
Food	4,192	3,101	3,539	3,728	4,273	4,842	5,345	5,959	8,392
Apparel	1,098	861	1,061	846	852	1,144	1,466	1,485	3,213
Health insurance	814	987	1,137	1,619	1,745	1,702	1,802	1,665	1,710
Medical services	297	272	405	401	582	782	690	761	1,088
Prescription drugs	490	391	426	757	757	782	702	645	656
Medical supplies	79	67	80	117	139	148	124	162	197
Personal care products and services	357	247	308	382	428	466	571	651	964
Education	393	366	461	217	282	289	413	619	1,488
Life and other personal insurance	176	177	214	354	299	367	429	523	859

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,177	3,806	4,081	4,652	4,872	5,570	5,842	6,855	9,090
Apparel	1,539	1,146	1,414	1,538	1,714	2,096	1,682	2,104	3,156
Health insurance	410	392	459	462	977	1,147	1,475	1,567	1,964
Medical services	299	137	156	282	450	507	657	681	1,187
Prescription drugs	203	206	299	275	367	493	469	541	603
Medical supplies	30	34	20	36	46	58	143	114	173
Personal care products and services	386	289	342	349	327	440	552	550	931
Education	541	307	238	192	336	413	375	733	2,228
Life and other personal insurance	156	63	117	1130	140	196	287	355	838

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,763	4,412	4,599	4,499	4,833	6,938	6,953	6,553	8,750
Apparel	1,975	1,484	1,615	1,549	1,481	1,788	1,414	1,938	3,091
Health insurance	428	483	464	582	955	1,279	1,443	1,554	1,905
Medical services	402	133	225	354	451	494	589	731	1,117
Prescription drugs	209	304	354	261	365	406	504	531	569
Medical supplies	54	23	65	54	60	89	120	114	169
Personal care products and services	399	314	379	329	365	457	532	609	968
Education	150	181	186	394	294	398	395	689	1,982
Life and other personal insurance	271	43	108	97	191	262	313	369	933

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	5,541	4,959	5,369	5,840	6,477	6,184	8,150	10,444
Apparel	1,714	1,636	1,729	1,696	2,057	1,623	2,274	3,671
Health insurance	595	494	526	708	983	1,311	1,686	1,812
Medical services	151	139	285	282	392	573	767	1,027
Prescription drugs	142	226	305	244	319	406	384	529
Medical supplies	55	22	43	57	76	86	106	164
Personal care products and	408	335	369	496	453	490	630	1,008

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services								
Education	263	258	440	301	365	563	813	2,588
Life and other personal insurance	80	125	152	122	236	268	409	807

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	6,029	5,379	5,808	6,746	6,472	6,654	7,939	10,966
Apparel	1,545	1,631	1,767	1,729	2,205	1,697	2,323	3,596
Health insurance	515	426	537	774	1,062	1,371	1,734	1,778
Medical services	234	148	236	271	468	693	786	921
Prescription drugs	101	173	273	238	302	376	384	495
Medical supplies	29	17	45	62	79	108	145	169
Personal care products and services	621	417	369	443	476	622	641	1,032
Education	369	218	402	305	302	414	807	2,701
Life and other personal insurance	206	177	130	200	236	321	415	784

10. If the debtor's household consists of five (5) or more persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	4,743	6,985	5,887	5,623	6,471	7,732	8,161	11,242
Apparel	1,374	2,330	1,634	1,831	2,246	2,184	2,443	4,052
Health insurance	368	221	532	569	836	1,087	1,320	1,868
Medical services	88	217	355	260	698	1,021	663	1,117
Prescription drugs	207	187	166	216	238	365	352	517
Medical supplies	25	21	24	59	56	79	93	180
Personal care products and services	360	535	275	3443	490	585	580	966
Education	516	198	252	326	313	657	788	2,575
Life and other personal insurance	286	110	86	115	233	254	322	1,092

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	6,640	6,701	5,988	6,326	6,707	7,541	8,175	10,731
Apparel	2,592	1,801	1,672	1,852	2,103	2,162	2,512	3,806
Health insurance	306	314	392	618	898	1,213	1,405	1,859
Medical services	163	184	441	346	468	676	729	1,113
Prescription drugs	218	181	200	191	233	322	361	523
Medical supplies	19	15	30	55	56	80	116	167
Personal care products and services	306	403	392	412	560	638	621	1,100
Education	368	253	160	311	355	603	733	2,386
Life and other personal insurance	136	90	96	89	272	280	385	939

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or

refuses to sign a receipt.

SPENCER NOE, Chair

APPROVED BY AGENCY: June 5, 2007

FILED WITH LRC: June 6, 2007 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Monday, July 23, 2007 at 10 a.m. at 100 Airport Road, 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 31, 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:** Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, ax (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures to be followed by the Authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reflect the current poverty level and consumer expenditure figures published by the federal government.

(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme financial hardship.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms with the requirements of federal and state law that the Authority promulgate regulations establishing the procedures for the conduct of hearings regarding administrative wage garnishment by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing an objective standard for extreme financial hardship that will be based on current economic data as established by the fed-

eral government.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers that have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment and who are claiming that such garnishment will cause them extreme financial hardship. During FY 2006-2007 approximately 822 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 25 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 25 hearing requests, 23 of the hearings were requested on the grounds of extreme financial hardship.

(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: Upon notice of the Authority's intent to issue an administrative wage garnishment, a student loan borrower contesting the garnishment and asserting a claim of extreme financial hardship will submit financial data to be evaluated in comparison to the data contained in the administrative regulation. Expenditures reported by the borrower which exceed the amounts specified in the administrative regulation will be presumed to be unnecessary. Thus, the most recent figures relating to consumer expenditures must be utilized in the administrative regulation.

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

(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forms for requesting a hearing and for providing extreme financial hardship are provided to the borrowers at no cost to the borrower. The Authority bears any costs associated with the request for hearing.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The authority maintains a federally restricted trust fund pursuant to 20 U.S.C. Section 1072b for operation of the insured student loan program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adopts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower's assertion that administrative wage garnishment will create an extreme financial hardship.

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

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE AND 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 will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(2), 20 U.S.C. §1095a, 34



C.F.R. §682.410(b)(10).

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. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 C.F.R. § 682.410 (b) (10), 20 U.S.C.S. § 1095a

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within 60 days, but shall not delay issuance of a withholding order. This administrative

regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months. Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the authority, as the designated state guarantee authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 U.S.C.S. § 1095a) and the applicable federal regulation (34 C.F.R. § 682.410(b)(10)). Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute: At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that

the authority may prescribe, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the authority may prescribe, may be rendered within 60 days, but shall not delay issuance of a withholding order. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months. Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of fifteen (150 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the authority, the hearing must be conducted and a decision rendered within sixty (60) days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe." The authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health,

safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**  
**Division of Student and Administrative Services**  
**(Amendment)**

**11 KAR 5:145. CAP grant award determination procedure.**

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891, and 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be \$4,110 [\$3,860] or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

- (a) \$950; or
- (b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

- (a) The amount specified in subsection (1)(a) of this section:
  - 1. Divided by twelve (12); and
  - 2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment, and
- (b) Not in excess of the maximum specified in subsection (1)(b) of this section.

(3) For any academic year, a student shall not receive more than \$1,900 for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer

academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his need by more than \$300, any amount over \$300 shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements, and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement, and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

SPENCER NOE, Chair

APPROVED BY AGENCY: June 5, 2007

FILED WITH LRC: June 6, 2007 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A

public hearing on this administrative regulation shall be held on Monday, July 23, 2007 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 31, 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Becky Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the award determination procedures for the CAP Grant Program. The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution and by setting the maximum amount that a student may receive in CAP grant funds for a given academic year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students applying for a CAP grant meet the required financial need criteria and those students receive the maximum CAP grant allowed for any academic period. The amendment to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate financial need, making grants available to more students and establishes the aggregate CAP grant award amount in any given academic year.

(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 merely increases the maximum expected family contribution level necessary to demonstrate financial need for eligibility for the CAP grant program.

(b) The necessity of the amendment to this administrative regulation: The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution for participation in the CAP grant program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution under the CAP grant program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment merely increases the maximum expected family contribution level for eligibility for participation in the CAP grant program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of 63 Kentucky postsecondary institutions are eligible for attendance by recipients of KHEAA grants. In the academic year ending June 30, 2006, there were 158,682 applicants for grant awards. A total of 63,598 students received KHEAA grant awards during that period.

(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: The amendment to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate financial need, making grants available to more students.

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

(a) Initially: The administrative regulation increases the maxi-

imum expected family contribution level necessary to demonstrate financial need, making grants available to more students. However, the amount of the grant, the funds available for grants, and in general the overall cost of administering the program will not increase or decrease.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE AND 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 will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4), 164.7889(3).

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. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### COUNCIL ON POSTSECONDARY EDUCATION (Amendment)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

RELATES TO: KRS 156.160, 164.001, 164.011, 164.020(3), 164.030

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.020(8) the council sets the minimum qualifications for admission to the state-supported postsecondary education institutions. It is the intent of the council that all students have available to them an opportunity for postsecondary education appropriate to their interests and abilities. This administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions.

Section 1. Definitions. (1) "Adult student" means a student who is twenty-one (21) years of age or older.

(2) "Council" is the Council on Postsecondary Education established by KRS 164.011 [defined by KRS 164.001(7)].

(3) [~~"Foreign language" means a language that is not the primary language used at home.~~]

(4) ["Institution" or "institutions" means a state-supported postsecondary education institution as defined in KRS 164.001(11) [KRS 164.001(10)].]

(4) [(5)] "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(11).

(5) [(6)] "Program of Studies" means the document "Program of Studies for Kentucky Schools: Grades Primary-12" adopted [published] by the Kentucky Board of Education.

(6) [(7)] "Developmental course [Remedial course]" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.

(7) [(8)] "System-wide standard" means an ACT Assessment sub-score [a score] of eighteen (18) in [or above on a mathematics;] English, nineteen (19) in mathematics, or twenty-one (21) in reading [or reading subscale of the ACT Assessment].

Section 2. Minimum Qualifications for Institutional Admission as First-time Students [Freshmen]. (1)(a) Except as provided by paragraph (b) of this subsection, an applicant seeking to enter a community and technical college shall have fulfilled the minimum requirements for admission to a degree program established by the Kentucky Community and Technical College System consistent with this administrative regulation [at a community or technical college or to a community college type program at a university] if the applicant has:

1. Graduated from a public high school or a certified nonpublic high school; or

2. Earned a high school general equivalency certificate (GED).

(b) The Kentucky Community and Technical College System may exempt a student who is eligible to pursue a GED from the requirements of paragraph (a) of this subsection.

(c) An applicant to a community-college type program at a university shall take the ACT Assessment.

1. Have satisfied the minimum requirements for admission to a two (2) year degree program established by the admitting institution consistent with this administrative regulation; and

2. Take the ACT Assessment.

(2)(a) Except as provided in paragraph (b) of this subsection, and applicant shall have fulfilled the minimum requirements for admission to a baccalaureate program at a university if the applicant has:

1. Graduated from a public high school or a certified nonpublic high school;

2. Completed the precollege curriculum established in Section 3 of this administrative regulation; and

3. Taken the ACT Assessment.

(b) An applicant who has earned a high school general equivalency

lency certificate (GED) or who is a graduate of a noncertified nonpublic high school, including a home school, may be admitted to a baccalaureate program at a university by taking the ACT Assessment and by scoring at levels [a level on the subtests] established by a [the] university. An applicant shall satisfy the provisions of paragraph (a)2 of this subsection by taking the ACT Assessment and by scoring at levels [on the ACT Assessment subtests that are] established by a university.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a university may substitute the SAT for the ACT Assessment. The ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, or ACCUPLACER Testing Program may be substituted for the ACT Assessment requirement for an adult student [students].

(4) An institution shall establish a written policy for admitting a student if an applicant has attended a noncertified or nonpublic school and completed a course of study. Noncertified nonpublic schools shall include a home school.

(5)(a) A nonresident seeking admission to a baccalaureate degree program at a university shall complete:

(a)1- The ACT recommended college core courses for the precollege curriculum which is listed in the Benefits of a High School Core Curriculum, ACT 2006 [ACT High School Profile Report, High School Graduating Class 1999]; or

(b)2- A college preparatory curriculum comparable to Kentucky's precollege curriculum.

(b) Except as provided in Section 3(10)(c) of this administrative regulation, a nonresident shall meet the same minimum qualifications for admission as a Kentucky resident as established in subsections (1) through (4) of this section.

(6)(a) A university may, under extenuating circumstances, admit a student who has not met the testing requirements of subsection (2)(a)3 of this section if the university has a written policy defining extenuating circumstances.

(b) If a university admits a student under paragraph (a) of this subsection, the student shall satisfy the provisions of subsection (2)(a)3 of this section during the first semester of enrollment.

(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.

Section 3. Precollege Curriculum. (1) ~~[Effective for the fall semester of 2000, an applicant to a baccalaureate degree program at an institution shall complete twenty (20) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study and is based on the Program of Studies.~~

(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English.

(b) Three (3) units of high school study in mathematics, including algebra I, algebra II and geometry. This mathematics requirement may be met by completing the integrated mathematics series consisting of three (3) units.

(c) Two (2) units of high school study in science, biology I and either chemistry I or physics I. At least one (1) science course shall be a laboratory course.

(d) Two (2) units of high school study in social studies, that shall include world civilization and either U.S. history or AP American history.

(e) A college-bound student is encouraged to take, as part of his elective course selection, additional coursework in mathematics, sciences, foreign languages, arts, and computer literacy.

(f) A substitution shall not be made for any course identified in this subsection unless the course in question has been deemed equivalent in content by the Council on Postsecondary Education in consultation with the Department of Education.

(2) ~~[Effective for the fall semester of 2002,]~~ An applicant to a baccalaureate degree program at an institution shall complete twenty-two (22) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study and is based on the Program of Studies.

(a) Four (4) units of high school study in English/language arts, specifically, including English I, English II, English III, and English IV or AP English.

(b) Except as provided in subparagraphs 1, 2, and 3 of this paragraph, three (3) units of high school study in mathematics, including algebra I, algebra II, and geometry.

1. A student may substitute for algebra I a mathematics course whose content is more rigorous than that described in the Program of Studies.

2. Algebra I may be taken prior to high school and counted as a required mathematics course if the academic content of the course is at least as rigorous as that listed in the Program of Studies and Core Content for Mathematics, High School Version 4.1 2006 herein incorporated by reference.

3. Algebra II shall include the content and skills described in the Core Content for Mathematics Assessment and shall be at least as rigorous as that listed in the Program of Studies and the Core Content for Mathematics, High School Version 4.1 2006.

(c) Three (3) units of high school study in science, to include physical science, life science, and earth and space science. At least one (1) unit shall be a laboratory course.

(d) Three (3) units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization.

(e) One-half (1/2) unit in health education.

(f) One-half (1/2) unit in physical education.

(g) One (1) unit in history and appreciation of visual and performing arts.

(h) ~~[Effective with the fall semester 2004, an applicant shall:~~

1- Complete] Two (2) units in the same foreign language unless the applicant's local school has:

1[a- Diagnosed the student as having a learning disability as set forth in KRS 157.200 and 707 KAR 1:280 or 707 KAR 1:310; and

2[b- Determined that the learning disability precludes the student from successfully completing a foreign language course, or

3. The applicant demonstrates[2- Demonstrate] linguistic competence and awareness of a foreign language at least equivalent to two (2) years of high school language]; or

3- Complete two (2) units of English as a second language (ELS)].

[(3)(a) Beginning with fall semester 2002 through the academic year 2003-2004, a student shall, in addition to the requirements of subsection (2) of this section, take seven (7) electives. Five (5) of the seven (7) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in an approved area:

1- Social studies.

2- Science.

3- Mathematics.

4- English/language arts.

5- Arts and humanities.

6- Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.

7- Foreign language.

8- Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways. The academic content shall be more rigorous than the introductory level as described in 703 KAR 4.060.

9- A college-bound student is encouraged to take, as part of an elective course selection, additional coursework in mathematics, sciences, and arts.

(b) Beginning with the fall semester 2004,]

(2) In addition to the requirements of subsection (1)(2) of this section, a student shall take five (5) electives. Three (3) of the five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in the following areas of study:

(a) Social studies.

(b) Science.

(c) Mathematics.

(d) English/language arts.

(e) Arts and humanities.

(f) Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.

(g) Foreign language.

(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways. [an approved area of study set forth in paragraph (a) 1 through 8 of this subsection.]

(3)(4)(a) A student may substitute an integrated, applied, interdisciplinary, or higher level course within a program of study for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

(b) Integrated mathematics courses are intended to be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated mathematics sequence.

(c) An approved substitute course may include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(4)(6) An institution may establish additional requirements to supplement this minimum academic preparation.

(5)(6)(a) A waiver of a required precollege curriculum course may be justified if:

1. A student is physically unable to complete a course because of a physical handicap;

2. A student's handicapping condition is verified through appropriate documentation; and

3. The school district superintendent or designee ~~(or designee)~~ verifies that a student's handicapping condition will prevent the student from completing the course in question.

(b) Following a determination that a student is unable to complete a course based upon paragraph (a) of this subsection, a local school may substitute another course in accordance with 704 KAR 3:305, Section 3(2)(2)(3).

(6)(7) ~~A course selection is tied to the Program of Studies and the individual course descriptions contained in that document.~~ For guidance in the selection of a specific course, a counselor may consult the ~~[program of studies and]~~ Council materials on the precollege curriculum.

(7) An(8) ~~Each~~ institution shall determine whether an applicant has met these minimum academic preparation requirements.

(8)(9) The precollege curriculum requirement shall apply to:

(a) A first-time student ~~[freshman]~~ pursuing a baccalaureate degree with or without a declared major;

(b) A student converting from nondegree status to baccalaureate degree status;

(c) A student changing from certificate or associate-degree level to baccalaureate-degree level, or [and]

(d) A student who, transferring from another institution, has been admitted to baccalaureate-degree status by the receiving institution.

(9)(10) The following shall be exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student entering baccalaureate-degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale;

(c) Active duty military personnel, their spouses, and their dependents;

(d) A student enrolled in a community or technical college or a community college type program at a university;

(e) A nonresident student because he or she is subject to the provisions of Section 2(5); or

(f) An international student.

Section 4. Conditional Admissions Qualifications. (1) A university shall have the option of admitting conditionally a first-time student ~~[freshman]~~ applicant to a baccalaureate degree program who has not met the requirements of Section 3 of this administrative regulation. A first-time student ~~[freshman]~~ admitted conditionally shall remove or otherwise satisfy [all] academic deficiencies in a

manner and time period established by the enrolling institution.

(2) An institution enrolling students in a baccalaureate degree program under the conditional admission provisions in subsection (1) of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate-degree status over the preceding four (4) years.

(3) Although not subject to the precollege curriculum for admission purposes, the precollege curriculum status of students enrolled in a community college-type program in a university shall be assessed and reported to the Council on Postsecondary Education.

(4) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission by an institution shall be exempt from the provisions of Sections 2 and 3 of this administrative regulation.

(5) At the discretion of the institution, a person who does not meet college entrance requirements, including high school students, may enroll in college courses as a nondegree student.

Section 5. Transfer Students. (1) The council's general education transfer policy and program specific agreements ~~[baccalaureate program transfer frameworks policy]~~ shall direct ~~[provide the basis for]~~ an institution's policy on the acceptance of transfer credits. ~~[The American Association of Collegiate Registrars and Admissions Officers' "Transfer Credit Practices of Educational Institutions" shall serve as a reference for admission of transfer students to an institution and for the acceptance of transfer credits.]~~

(2) An ~~[A state-supported]~~ institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.

(3) An institution, consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through a dual enrollment arrangement shall be treated the same as credit earned in any other college course.

Section 6. Assessment and Placement of Students. (1) The assessment and placement policy of the council ~~[shall be effective with the fall semester 2004 and]~~ shall apply to:

(a) A first-time student ~~[freshman]~~ enrolled in an associate or baccalaureate degree program or a certificate or diploma program at an institution;

(b) A student who transfers from a degree program at one (1) institution into a ~~[baccalaureate]~~ degree program at another institution and who has not taken and successfully passed college-level courses in mathematics and English;

(c) A student who transfers from a certificate or diploma program into a degree program and who has not taken and successfully passed college-level courses in mathematics and English;

(d) A student converting from nondegree status to degree status who has not taken and successfully passed college-level courses in mathematics and English.

(2) A nondegree-seeking student shall be exempt from system-wide mandatory assessment and placement policies.

(3) An institution ~~[A university]~~ shall use the ACT Assessment to evaluate student competencies in mathematics, English, and reading. An institution ~~[A university]~~ may accept scores on the SAT in lieu of the ACT Assessment for placement in college-level courses.

(4) An institution shall, where a student is determined to have not met the systemwide standards for readiness, use a placement exam ~~[A university may use an institutional placement exam as a supplement to the ACT Assessment]~~ to help place a student in the proper course.

(5) An institution(4)(a) ~~[A university]~~ shall place a student who scores below the system-wide standard in mathematics, English, or reading in an:

(a)(1) ~~[1]~~ Appropriate developmental ~~[remedial]~~ course in the relevant discipline; or

(b)(2) ~~[2]~~ Entry-level college course, if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond



that usually associated with an entry-level course.

~~[(b) A university may set a cut-off score above the system-wide standard to place a student.]~~

(6) Effective with the fall semester of 2009, an institution shall satisfy the provisions of subsection (4) of this section by placing a student in the appropriate developmental course or discipline or entry-level college course in the first term that a student is enrolled.

(7)(a) A student shall not be required to enroll in a developmental course in English if the student has a subscore on the ACT Assessment of eighteen (18) or higher in English. The student shall be permitted to enroll in a credit-bearing writing course.

(b) A student shall not be required to enroll in a developmental course in Mathematics if the student has a subscore on the ACT Assessment of nineteen (19) or higher in Mathematics. A student who scores between nineteen (19) and twenty-one (21) shall be permitted to enroll in a credit-bearing mathematics course.

1 A student who scores twenty-two (22) through twenty-six (26) on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing algebra course.

2. A student who scores twenty-seven (27) or higher on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing calculus course.

(c) A student who demonstrates a level of competence by achieving the standards in the Kentucky Statewide College-Readiness Standards (incorporated by reference), and the scores contained in paragraph (a) or (b) is guaranteed placement in credit-bearing coursework, but is not guaranteed admission to a university.

(8)(6) An adult student who has been admitted without the ACT Assessment test or the SAT may be placed into an appropriate course using:

- (a) The ACT Residual Test;
- (b) The ASSET Testing Program;
- (c) The COMPASS Testing Program;
- (d) The ACCUPLACER Testing Program; or
- (e) An institutional placement test.

(9) An institution[(6) A university] shall be responsible for determining the remediation required including the number of remedial courses required, if necessary.

(10) Provided, however that effective with the fall semester of 2009, an institution shall enroll a student who scores below the statewide standards in appropriate developmental or supplemental courses consecutively until readiness for credit-bearing courses has been demonstrated. An institution shall also ensure that a student who completes a developmental or supplemental course shall immediately enroll in a credit-bearing course in that subject or discipline.

[(11)(7)(a) KCTCS shall select campus placement tests for the community and technical colleges that assess mathematics, English, and reading skills. [This requirement also shall apply to the Lexington Community College].

(b) [KCTCS shall ensure that the same campus placement tests are used by the Technical College Branch and the Community College Branch to assess degree-seeking students.

(c) KCTCS [and the Lexington Community College] may use the ACT Assessment scores or SAT scores to place a student into an appropriate developmental course.

[(12)(8) The KCTCS [and the Lexington Community College] shall place a degree-seeking student who scores below the system-wide standard in mathematics, English, or reading in an:

- (a) Appropriate developmental [remedial] course in the relevant discipline; or
- (b) Entry-level college course if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that which is usually associated with an entry-level course.

[(13)(9) KCTCS shall develop guidelines for use at the community and technical colleges that will determine the remediation required in mathematics, English, or reading based upon placement test scores. This requirement also shall apply to the Lexington Community College.

[(10)(a) KCTCS shall develop assessment and placement policies for students who enroll in certificate and diploma programs.

(b) For each certificate and diploma program, KCTCS shall

determine the proper cut-off scores for placing students and the standards for exiting remedial instruction.

(e) KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in mathematics, English, and reading.

[(14)(11) Effective with the spring semester 2004,] an institution shall report to the council data that monitors the performance of first-time students [freshmen] in developmental [remedial] and entry-level courses. The core elements of the first-time students [freshmen] performance monitoring system shall include, as appropriate:

- (a) ACT or SAT scores;
- (b) Institutional placement exam results;
- (c) Information that identifies whether a course is developmental [remedial], entry-level, or entry-level with supplementary academic support provided; and
- (d) Grades in developmental [remedial] and entry-level courses.

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

(a) The "Program of Studies for Kentucky Schools, Grades Primary-12", 2006 [1998], Kentucky Department of Education;

(b) "Core Content for Mathematics Assessment", Version 4.1, 2006 [3.0, 1999], Kentucky Department of Education;

(c) "General Education Transfer Policy", 2004 [1995], Council on Postsecondary Education;

(d) Benefits of a High School Core Curriculum (ACT 2006): [Baccalaureate—Program—Transfer—Frameworks], 2000-2001, Council on Postsecondary Education; and]

(e) "Kentucky Statewide College-Readiness Standards; and (f) 704 KAR 3:305 Minimum Requirements for High School Graduation [ACT High School Profile Report, High School Graduating Class 1999", ACT, Inc.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS D. LAYZELL, President

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: June 13, 2007

FILED WITH LRC: June 14, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on 13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky on July 25, 2007, at 10 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Frankfort, Kentucky Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 2007, five working days prior to the hearing, of their intent to attend. If no notification 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 31, 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: Sherri Noxel, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, phone (502) 573-1555 ext. 350, fax (502) 573-1535, email sherri.noxel@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sherri Noxel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the minimum requirements for admission to state-supported institutions and presents new standards for the



assessment and placement of students in developmental courses. The administrative regulation also sets out the requirements for acceptance of transfer courses and mandates that transferring students receive academic counseling.

(b) The necessity of this administrative regulation: KRS 164.020(8) authorizes the Council on Postsecondary Education to set minimum admissions requirements for the state-supported postsecondary education system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides guidance to high school students and parents, K-12 guidance counselors, and other local school officials on what courses and other requirements are necessary for someone to enter a Kentucky state-supported postsecondary education institution. The administrative regulation clarifies standards for college readiness and requires assessment of students, particularly in English, reading and mathematics.

(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 aligns the existing precollege curriculum with the new, more rigorous high school curriculum standards adopted by the Kentucky Department of Education. The proposed changes increase the systemwide standards on the ACT in order to avoid placement in developmental education courses. Students who demonstrate proficiency by scoring at the systemwide standard are guaranteed placement in credit-bearing course.

(b) The necessity of the amendment to this administrative regulation: The Council on Postsecondary Education is committed to increasing retention and graduation rates at the state-supported postsecondary education institutions. The recent findings of the Statewide Developmental Education Task Force recommend that standards for readiness be increased to more accurately reflect the level of preparation needed to succeed in college-level course work.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms exactly to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The purpose of the statutory provision for the Council on Postsecondary to set minimum readiness standards supports the Council's strategic agenda calling for a significant increase in college graduates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The primary individuals and organizations affected by this regulation are public postsecondary education institutions, local school district officials, the Kentucky Department of Education, and prospective students and their parents.

(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: The local school districts and the Kentucky Department of Education will now have clearer guidelines on the requirements for admission to college in Kentucky and student readiness. High school students and their parents will have clear guidelines on systemwide readiness standards for college work. Postsecondary education institutions also will have clear guidelines for addressing underprepared students.

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

(a) Initially: No additional cost at the local schools since implementation will occur with existing personnel. At the university level, and at the Kentucky Community and Technical College System, there will be some cost as a result of increasing numbers of developmental education sections. The institutions already provide developmental education services. Funds will be reallocated within institutional budgets to accommodate any additional sections that are required.

(b) On a continuing basis: No additional cost at the local schools since implementation will occur with existing personnel. At

the university level, and at the Kentucky Community and Technical College System, costs are expected to decline over time as more students meet the readiness standards with implementation of the clear statewide standard for college readiness included in the this administrative regulation, the implementation of the ACT service EPAS testing system in middle/high schools allowing early interventions to help students meet these standards, and the outcome-based reforms of Kentucky Adult Education. The overall investments to improve student readiness and the effectiveness of postsecondary education developmental education programs will result in higher retention and graduation rates of enrolled undergraduates resulting in greater productivity and efficiency in the postsecondary system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Funds and university 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.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING Is tiering applied? Tiering is not appropriate under these circumstances.

## KENTUCKY STATE BOARD OF ELECTIONS (Amendment)

### 31 KAR 6:030. Uniform definition of a vote.

RELATES TO: KRS 117.265, 117.379, 117.381, 42 U.S.C. 15481

STATUTORY AUTHORITY: KRS 117.015(1), 42 U.S.C. 15481(a)(6)

NECESSITY, FUNCTION, AND CONFORMITY. KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. This administrative regulation establishes those standards [requirements].

Section 1. Definitions. (1) "Accessibility device" means any mechanism used to aid the voter in casting his vote for a candidate or an answer to a question on a ballot and is approved pursuant to KRS 117.379 and 117.381.

(2) "Ballot" is defined by KRS 117.375(6).

(3) "Ballot label" is defined by KRS 117.375(5).

(4) "Direct recording electronic (DRE) voting system" means a computer-driven unit that counts votes cast by a voter through the use of a touchscreen, a button, or an approved accessibility device, and that processes and records the data by means of internal memory devices.

(5) "First name" means an individual's name or names given at birth, as distinguished from a family name or surname.

(6) "Name" means one (1) or more first names coupled with one (1) or more surnames.

(7) "Nickname" means a shortened version of an individual's name or a descriptive or alternative name, in addition to or instead of the first name or surname of an individual.

(8) [(4)] "Optical scan voting system" means a tabulating device that reads paper ballots by detecting voters' marks using reflected or absorbed light.

(9) "Overvote" means when a voter makes more than the permitted number of selections in a single race.

(10) "Surname" means the family name automatically bestowed at birth, acquired by marriage, or legally adopted by choice.

(11) "Touchscreen" means a screen on a DRE voting system that the voter touches to enter his or her selections in casting a ballot in an election.

[(12)](6) "Write-in vote" means a vote on a ballot on which the voter writes, types, or uses an approved accessibility device to record, the surname [name] of an eligible write-in candidate in the

space reserved on the ballot for write-in votes and, on an optical scan ballot, properly marks the oval or connects the arrow according to the directions provided to the voter.

Section 2. A ballot may be paper or electronic

Section 3. Definition of a Vote. Direct recording electronic (DRE) voting system.

(1) A vote on a direct recording electronic (DRE) voting system shall be the choice made when a voter selects a candidate, or the desired answer to a question and touches the screen, presses a button, or uses an approved accessibility device to cast a ballot.

(2) To select a candidate or an answer to a question, the voter shall:

(a) Press the appropriate place on the touchscreen, press the button, or use an approved accessibility device to choose a candidate or answer to a question for which the voter desires to vote,

(b) Type on the touchscreen or use the scrolling device to select on the screen the letters for the name of a write-in candidate in accordance with the instructions for voting on the DRE voting system and press the appropriate place on the touchscreen or press the button to record the write-in vote;

(c) Press the appropriate place on the ballot label to designate a write-in candidate and write in the name of an eligible candidate on the paper provided in the write-in candidate window; or

(d) Use an approved accessibility device on an accessible voting unit to signify the voter's selection of a particular candidate or answer to a question for which the voter desires to vote.

(3) To cast a ballot, the voter shall:

(a) Press the place on the touchscreen or press the button designated for casting the ballot, or

(b) Use an approved accessibility device for the accessible voting unit to signify the voter's desire to cast the ballot.

Section 4. Definition of a Vote. Optical scan voting system. (1) Automatic tabulation. If ballots are tabulated electronically, a vote cast on an optical scan voting system shall be the choice made by a voter by:

(a) Filling in the oval or connecting the arrow next to the candidate's name or the question choice; or

(b) Writing in the name of an eligible candidate in the designated write-in space and filling in the oval or connecting the arrow next to the designated write-in space.

(2) Manual tabulation. If ballots are tabulated manually, the following marks made by a voter shall constitute a vote for a candidate or question choice on an optical scan voting system:

(a) The majority of an oval or arrow designating a candidate or question choice is filled in;

(b) The oval or arrow next to the candidate's name or the question choice is circled or underlined;

(c) The candidate's name or the question choice is circled or underlined;

(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;

(e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or

(f) There is a diagonal, horizontal, or vertical line:

1. A portion of which intersects two (2) points on the oval or arrow next to the candidate's name or the question choice; and

2. That does not intersect another oval or arrow at any two (2) points.

(g) If a voter designates a choice to vote a straight political party ticket, and also designates a vote for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.

(3) Manual tabulation write-in voting. If write-in ballots are tabulated manually, the following shall constitute a valid vote for a candidate:

(a)1. The voter shall cause the oval or arrow next to the area designated for the selection of a write-in candidate to be marked consistent with subsection (2) of this section; and

2. The voter shall write the name of an eligible write-in candi-

date under KRS 117.265 in the area designated for the selection of a write-in candidate; and

(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote.

(4) Manual tabulation other marks or words. If a choice is indicated in accordance with subsection (2) or (3) of this section, and another choice is similarly marked, the voter may take one (1) of the following actions:

(a) If the voter used a pencil, the voter may erase the mark for the candidate he or she does not wish to select, or

(b) If the voter used ink, the voter may circle the name of the candidate he or she wishes to select.

Section 5. Definition of a Vote. Paper ballot. (1) Tabulation. The following marks made by a voter shall constitute a vote for a candidate or question choice on a paper ballot:

(a) The majority of a box or space designating a candidate or question choice is filled in;

(b) The box or space next to the candidate's name or the question choice is circled or underlined;

(c) The candidate's name or the question choice is circled or underlined;

(d) The party, group, organization, or independent status abbreviation next to the candidate's name is circled or underlined;

(e) There is an "X", a check mark, a plus sign, an asterisk, a star, or any other mark indicating the intent of the voter next to the candidate's name or question choice; or

(f) There is a diagonal, horizontal, or vertical line:

1. A portion of which intersects two (2) points on the box or space next to the candidate's name or the question choice; and

2. That does not intersect another box or space at any two (2) points.

(g) If a voter designates a choice to vote a straight political party ticket, and also designates a vote for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate for that specific race and the remaining votes on the ballot shall be counted for the straight political party.

(2) Write-in voting on a paper ballot. The following shall constitute a valid vote for a candidate:

(a)1. The voter shall cause the box or space next to the area designated for the selection of a write-in candidate to be marked consistent with subsection (1) of this section; and

2. The voter shall write the name of an eligible write-in candidate under KRS 117.265 in the area designated for the selection of a write-in candidate; and

(b) If a voter designates a vote for a named candidate on the ballot and also writes in the name of a different person, these actions shall be considered an overvote, with neither candidate receiving credit for the vote.

(3) Other marks or words on a paper ballot. If a choice is indicated in accordance with subsection (1) or (2) of this section, and another choice is similarly marked, the voter may take one (1) of the following actions:

(a) If the voter used a pencil, the voter may erase the mark for the candidate he or she does not wish to select; or

(b) If the voter used ink, the voter may circle the name of the candidate he or she wishes to select.

Section 6. Definition of a Vote. Write-in voting generally.

(1) Only votes cast for eligible write-in candidates under KRS 117.265 shall be considered valid and counted.

(2) A write-in vote for a candidate whose name already appears on the ballot label as a candidate shall not be counted as a vote under KRS 117.265.

(3) The use of stickers, labels, rubber stamps, or other similar devices shall not be counted as write-in votes.

(4) Any misspelling [or other minor variation in the form] of the name of a candidate shall be disregarded in determining the validity of a write-in vote as long as the intended candidate may [ear] be clearly determined.

(5) Writing in only the [last name of] surname of an eligible candidate shall constitute a valid vote, unless there is more than

one (1) filed candidate with the same surname [last-name] for that office. If there is more than one (1) filed candidate with the same surname [last-name] for that office, writing in only the last name or surname shall not constitute a vote.

(6) Writing in only an abbreviated form of the surname shall not constitute a valid vote.

(7) Writing in only the first name of an eligible candidate shall not constitute a valid vote.

(8) Writing in only the initials of a candidate shall not constitute a vote.

(9) Writing in only the nickname of an eligible candidate shall not constitute a valid vote.

(10) If the voter writes in any other name along with the surname of an eligible write-in candidate, the other name written by the voter shall comply with the variations of names listed by the candidate on SBE/SOS/01, SBE/SOS/02, or SBE/SOS/03, depending on the candidate, to constitute a valid vote.

(11) Writing in the surname [name] of the candidate for Governor or the surname [name] of the candidate for Lieutenant Governor shall be sufficient to cast a write-in vote for the slate.

(12) Writing in the surname [name] of the candidate for President or the surname [name] of the candidate for Vice President shall be sufficient to cast a write-in vote for the slate.

Section 7. This administrative regulation shall not diminish the powers granted to the State Board of Elections and County Boards of Elections established by KRS Chapter 117.

Section 8 Incorporation by Reference (1) The following material is incorporated by reference:

(a) SBE/SOS/01-"Declaration of Intent to be a Write-In Candidate", (June 2007 edition);

(b) SBE/SOS/02-"Presidential/Vice Presidential Candidates' Declaration of Intent to be Write-In Candidates", (June 2007 edition);

(c) SBE/SOS/03-"Governor/Lieutenant Governor Candidates' Declaration of Intent to be a Write-In Candidates", (June 2007 edition);

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

TREY GRAYSON, Chair

APPROVED BY AGENCY: June 11, 2007

FILED WITH LRC: June 14, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2007, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 17, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the 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 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Dunnigan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a uniform and nondiscriminatory standard to define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with 42 U.S.C. 15481(a)(6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the board to promulgate administrative regulations governing the conduct of elections. 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. This administrative regulation establishes those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a uniform and nondiscriminatory standard to define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State ensuring that all eligible voters, registered voters, actual voters, election officials and boards and the general public will know what constitutes a vote.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will provide clarity for the language applied to write-in voting for eligible write-in candidates and more accurately define what constitutes a write-in vote to safeguard against confusion on the part of election officials in counting write-in votes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to safeguard against confusion on the part of election officials in counting write-in votes on election day and to avoid potential election contests and recounts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides a more accurate definition for what constitutes a write-in vote in conformity with 42 U.S.C. 15481(a)(6).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist election officials in counting write-in votes after each election and to conform to 42 U.S.C. 15481(a)(6), the Help America Vote Act.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All eligible voters; all registered voters; all actual voters; all election officials and boards; the general public.

(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 election officials will have to follow this amendment when manually counting ballots after an election.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this administrative regulation or its amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The groups will know what constitutes a vote for each category of voting system used in the State and, through this amendment, will have a more accurate definition for what constitutes a write-in vote.

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

(a) Initially: There are no costs associated with this administrative regulation or its amendment.

(b) On a continuing basis: There are no costs associated with this administrative regulation or its amendment.

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

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: No fees are or will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all citizens.

#### 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 election officials and county boards of elections.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and 42 U.S.C. 15481(a)(6), the Help America Vote Act.

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 will not generate any revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this administrative regulation.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: N/A

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 42 U.S.C. 15481(a)(6).

(2) State compliance standards: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections.

(3) Minimum or uniform standards contained in the federal mandate: 42 U.S.C. 15481(a)(6) requires each state to adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. This administrative regulation establishes those requirements

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None

#### FINANCE AND ADMINISTRATION CABINET

##### Kentucky Retirement Systems (Amendment)

105 KAR 1:180. Death before retirement procedures.

RELATES TO: KRS 16.578, 16.601, 61.640, 78.545

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 16.578, 16.601 and 61.640 provide for the payment of certain benefits upon the death of a member prior to retirement. This administrative regulation establishes the procedures for issuance of benefits if death occurs prior to retirement.

Section 1. After learning of the death of a member prior to retirement, the retirement system shall contact the named beneficiary or estate of the deceased member. The retirement system shall require a Form 6810, Certification of Beneficiary, if the beneficiary is eligible for monthly payments, or Form 6825, Refund of Deceased Member's Account, if the beneficiary is eligible only for a refund of the member's account.

Section 2. The following information shall be required before benefits shall be paid:

(1) A copy of the death certificate for the member.

(2) If a beneficiary is deceased, a copy of the death certificate for the beneficiary.

(3)(a) If a beneficiary or dependent child is a minor, a copy of the minor's birth verification, and a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor.

(b) If dependent children are eligible for payments, a Form 6456, Designation of Dependent Child, for each dependent and verification of full-time student status of any dependent child age eighteen (18) or over.

(c) The parent or guardian shall notify the system of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student. Upon request, the parent or guardian shall provide verification of the child's status as a full-time student.

(4) If the beneficiary is the surviving spouse of the deceased member and the spouse elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or sixty (60) months certain option, a "Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution."

(5) If the beneficiary is not the surviving spouse of the deceased member and the nonspouse beneficiary elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or sixty (60) months certain option, a "Form 6026, Direct Rollover/Direct Payment Election Form for a Non-spouse Beneficiary of an Eligible Rollover Distribution."

(6) If a beneficiary is divorced from the member, a copy of the divorce decree.

(7) [(5)] If monthly benefits are available to the beneficiary, copies of the birth verifications [certificates] of the member and the beneficiary.

(8) [(6)] If an estate is beneficiary, a copy of the court order appointing the executor, administrator or personal representative of the estate, or the court order dispensing with formal administration of the estate.

Section 3. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may require additional evidence relating to the cause of death or investigations and arrests by law enforcement agencies and may delay benefits until it deems the cause of death to be fully explained.

Section 4. (1) Upon receipt of the death certificate and other applicable [necessary-beneficiary] documents, the retirement office shall provide to the beneficiary the monthly payment options available on the Form 6010, Estimated Retirement Allowance.

(2) If multiple beneficiaries are named, the retirement system shall provide the Form 6010, Estimated Retirement Allowance, to the first named beneficiary on the member's beneficiary designation form. The additional beneficiaries shall be provided a Form 6011, Retirement Monthly Payment Options. The multiple beneficiaries shall return all necessary documents, shall select the same

payment option, and sign and return the Form 6010, Estimated Retirement Allowance. The Form 6010, Estimated Retirement Allowance, shall be returned to the retirement system before benefit payments will commence.

(3) Upon receipt of Form 6825, Refund of Deceased Member's Account, and other applicable beneficiary documents, the retirement system shall process a refund of the member's accumulated contributions and interest to the beneficiary ~~(the member's accumulated contributions and interest)~~

(4) If the member died in the same month as his effective retirement date but before the first retirement allowance payment has been issued by the State Treasurer ~~(prior to the drawing of the first check)~~, the beneficiary shall also be offered the benefits payable to a beneficiary under the option the member selected.

Section 5. Payment shall not be made until all information, documents and forms required by the retirement system are received.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 6810, Certification of Beneficiary (Rev. 7/00)", Kentucky Retirement Systems;

(b) "Form 6010, Estimated Retirement Allowance (Rev. 7/04[7/02])", Kentucky Retirement Systems;

(c) "Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor (Rev. 5/03[7/00])", Kentucky Retirement Systems;

(d) "Form 6456, Designation of Dependent Child (Rev. 7/04[7/00])", Kentucky Retirement Systems;

(e) "Form 6825, Refund of Deceased Member's Account (Rev. 7/00)", Kentucky Retirement Systems; and

(f) "Form 6011, Retirement Monthly Payment Options (Rev. 7/02)", Kentucky Retirement Systems;.

(g) "Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, (Rev 5/07)", Kentucky Retirement Systems; and

(h) "Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, (Rev 5/07)", Kentucky Retirement Systems.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Penmeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4.30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 17, 2007

FILED WITH LRC: June 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on July 25, 2007, at 9 a.m. at the Kentucky Retirement Systems, Penmeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2007, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the 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. 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: J. Eric Wampler, Kentucky Retirement Systems, Penmeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation provides for procedures for payment of death benefits from the member account upon death of a member prior to retirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures for payment of death benefits from the member account upon death of a member prior to retirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 16.578, 16.601, 61.640, and 78.545 provide for payment of death benefits from the member account in KERS, CERS, and SPRS upon death of a member prior to retirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the procedures for payment of death benefits from the member account upon death of a member prior to retirement.

(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 provides for the procedure and forms for a spouse or non-spouse beneficiary to rollover eligible distributions and updates language to correspond more closely to the statutory language;

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide for the procedures and forms for rollovers of eligible distributions by beneficiaries.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes KRS 16.578, 16.601, 61.640, and 78.545 provide for payment of death benefits from the member account in KERS, CERS, and SPRS upon death of a member prior to retirement. The amendment provides procedures and forms for beneficiaries to rollover eligible distributions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing procedures and forms for beneficiaries to rollover eligible distributions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those individuals or entities affected by this administrative regulation are those beneficiaries named on a member account where the member dies before retirement.

(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 complete the appropriate forms.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to rollover eligible distributions.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) **TIERING:** Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

#### 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:

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

##### 105 KAR 1:200. Retirement procedures and forms.

RELATES TO: KRS 16.576, 16.577, 16.645, 61.590, 61.595, 61.702, 61.705, 78.545

STATUTORY AUTHORITY: KRS 61.590(1), 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.590(1) requires that a member or beneficiary eligible to receive retirement benefits have on file at the retirement office each form required by the board. This administrative regulation establishes the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1.(1) The member shall submit a Form 6000, Notification of Retirement, to the retirement systems no earlier than six (6) months prior to his desired effective retirement date. The member shall provide current information regarding any sick or compensatory leave balances with the Form 6000, Notification of Retirement. The member shall file a copy of the most recent check stub indicating the sick and compensatory leave balances or the member shall submit written verification by the member's employer of the member's sick and compensatory leave balances as of the member's actual or scheduled termination date.

(2) The member shall designate the beneficiary of his retirement allowance on the Form 6000, Notification of Retirement.

(3) The Form 6000, Notification of Retirement; shall be dated and the member's signature shall be witnessed.

Section 2.(1) The retirement system shall provide an estimate of the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member

or his employer.

(2) The payment options and amounts available to the member shall be printed on the Form 6010, Estimated Retirement Allowance, and provided to the member with a place to designate his choice of payment option [options].

Section 3 (1) The member shall designate a desired payment option and sign and date the Form 6010, Estimated Retirement Allowance. The member's signature shall be witnessed and the Form 6010, Estimated Retirement Allowance, returned to the retirement office.

(2) The member shall terminate his employment the month before his effective retirement date. The retirement office shall process the first payment in the month following the month in which the completed Form 6010, Estimated Retirement Allowance, and all other applicable [necessary] forms, as provided in this administrative regulation, have been filed at the retirement office. The Form 6010, Estimated Retirement Allowance, and all other applicable [necessary] forms, as provided in this administrative regulation, shall be filed in the retirement office [by close of business] on the last [business] day of the month preceding the month of the member's effective retirement date.

(3) If the member is retiring under early retirement provisions, the member shall return the Form 6010, Estimated Retirement Allowance, within six (6) months of his retirement date to retain the effective date of retirement shown on the form.

(4) If the member fails to return the Form 6010, Estimated Retirement Allowance, within six (6) months of his retirement date, the member's Form 6000, Notification of Retirement, shall be considered void and he shall be required to submit a new Form 6000, Notification of Retirement. If a member's Form 6000, Notification of Retirement, is withdrawn, invalid, or voided, the beneficiary(ies) and contingent beneficiary(ies) designated on the last Form 2035, Beneficiary Designation, on file at the retirement office shall remain in full force and effect.

Section 4.(1) The member shall provide the retirement system a copy of his birth certificate or other applicable verification of age [hospital record] and, if a survivorship payment option is selected, a copy of the birth certificate or other applicable verification of age [hospital record] of the beneficiary named on his Form 6000, Notification of Retirement. If the member's or beneficiary's name is no longer the same as the name listed on the birth certificate or other applicable verification of age, the systems may require the member or beneficiary to submit a marriage license, court order, or other acceptable documentation of the name change.

(2) ~~If a birth certificate or hospital record is not available, the retirement system may, in its discretion, accept other proof of age accompanied by a letter from the office responsible for birth records in the state of the individual's birth stating that a birth certificate is not available.~~

(3) The retirement system may, in its discretion, accept one (1) or more of the following as proof of age of the member or his beneficiary:

(a) Age record of the Social Security Administration;

(b) Immigration and naturalization service records;

(c) Baptismal record;

(d) Marriage license;

(e) School record;

(f) Birth certificate of child;

(g) Military discharge;

(h) U.S. passport; or

(i) Other reliable proof of age as determined to be acceptable by Kentucky Retirement Systems.

Section 5.(1) A recipient shall complete a Form 6130, Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

~~[(2) The recipient and]~~ The financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

~~[(2) (3)]~~ (a) At any time while receiving a retirement allowance,



the recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment and filing the form at the retirement office in Frankfort.

(b) The last Form 6130, Authorization for Deposit of Retirement Payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(3)(4) The recipient may complete a Form 6135, Request for Payment by Check, if the recipient does not currently have an account with a financial institution or the recipient's financial institution does not participate in the electronic funds transfer program.

(4)(5) The retirement office shall not process the retirement allowance until the recipient has filed a completed Form 6130, Authorization for Deposit of Retirement Payment or filed a completed Form 6135, Request for Payment by Check.

Section 6.(1) The retirement office shall provide a Form 6120, Certification of Service, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which he may be eligible to purchase credit prior to termination [retirement].

(2) The retirement office shall, upon request, provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit.

Section 7.(1)(a) The retirement office shall provide forms for the selection or waiver of medical insurance coverage for the member, his spouse and dependents under the group insurance plan at the time of retirement.

(b) The recipient shall complete the Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems [Commonwealth of Kentucky Retiree Health Insurance Application] or the Form 6200, Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form [High and Low Option Coverage].

(2)(a) If the insurance form is received by the last day of the month prior to the month the initial retirement allowance is processed, the insurance coverage shall be effective the first day of the month the recipient becomes eligible for insurance coverage.

(b) If the form is received or any changes made within thirty (30) days following the first day of the month in which the initial retirement allowance is processed, coverage shall be effective the first day of the month following the month in which the initial retirement allowance is processed.

(3) A recipient who fails to submit a form selecting medical insurance coverage within thirty (30) days following the first day of the month in which the initial retirement allowance is processed shall not be eligible for benefits under the insurance plan until the following open enrollment period.

Section 8.(1) The retirement office shall provide a Form 6017, Federal Income Tax Withholding Preference for Periodic Payments, to the member to request that federal income taxes be withheld or not withheld from his retirement allowance.

(2) If the member is eligible for benefits from the excess benefit plan, the retirement office shall provide an IRS Form W-4 Employees Withholding Allowance Certificate [a Form 6019, Federal Income Tax Withholding Preference for Periodic Payments Excess Benefit Plan].

Section 9. The retirement office shall provide a Form 6030, Death Benefit Designation, to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems. If the member does not file, or completes incorrectly, a Form 6030, Death Benefit Designation, the member's estate shall become the default beneficiary.

Section 10.(1) The retirement office shall not process a monthly retirement allowance until the member has filed at the retirement office a Form 2001, Membership Information Form, a properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance, a copy of the member's birth verification, a copy of the birth verification for the beneficiary if selecting a survivorship option, and a completed Form 6130, Authorization for Deposit of Retirement Payment, or a completed Form 6135, Request

for Payment by Check.

(2) The retirement office shall not process a lump sum retirement benefit until:

(a) The member has filed at the retirement office a Form 2001, Membership Information Form; a properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance, a Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution; and a copy of the member's birth verification; and

(b) The member's employer has filed at the retirement office proof of the member's termination and reported all creditable compensation and accumulated sick leave.

(3) The retirement office shall not process a partial lump sum options retirement benefit until:

(a) The member has filed at the retirement office a Form 2001, Membership Information Form; a properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance; a Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution; a copy of the member's birth verification; and a copy of the birth verification for the beneficiary if selecting a survivorship option, and

(b) The recipient has filed a completed Form 6130, Authorization for Deposit of Retirement Payment or filed a completed Form 6135, Request for Payment by Check.

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

(a) Form 6000, "Notification of Retirement", July 2004, Kentucky Retirement Systems;

(b) Form 6010, "Estimated Retirement Allowance", July 2004, Kentucky Retirement Systems;

(c) Form 6130, "Authorization for Deposit of Retirement Payment", October 2002, Kentucky Retirement Systems;

(d) Form 6120, "Certification of Service", July 2000, Kentucky Retirement Systems;

(e) Form 6200, "Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form [High and Low Option Coverage]", October 2006 [November 2002], Kentucky Retirement Systems;

(f) Form 6017, "Federal Income Tax Withholding Preference for Periodic Payments", April 2003, Kentucky Retirement Systems;

(g) Form 6030, "Death Benefit Designation", April 2002, Kentucky Retirement Systems;

(h) IRS Form W-4 "Employees Withholding Allowance Certificate" [Form 6019, "Federal Income Tax Withholding Preference for Periodic Payments Excess Benefit Plan", April 2003, Kentucky Retirement Systems];

(i) Form 6135, "Request for Payment by Check", February 2002, Kentucky Retirement Systems;

(j) "Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems" [Commonwealth of Kentucky Retiree Health Insurance Application], Kentucky Retirement Systems;

(k) Form 2001 "Membership Information", February 2002, Kentucky Retirement Systems;

(l) Form 6016, "Federal Income Tax Withholding Preference for NonPeriodic Payments," April 2003, Kentucky Retirement Systems;

(m) Form 2035, "Beneficiary Designation", June 2003, Kentucky Retirement Systems; and

(n) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution", May 2007 [June 2004], Kentucky Retirement Systems.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Monday through Friday, 8 a.m. to 4 30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 17, 2007

FILED WITH LRC: June 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2007, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky.



Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the 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 31, 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:** J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800, ext. 5501, fax (502) 696-8801.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.590(1) requires a member or beneficiary eligible to receive a benefit have on file at the retirement office each form required by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting out the procedures and forms for application for and receipt of retirement benefits for members and beneficiaries of the Kentucky Retirement Systems.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the Form 6025 to clarify that it is to be used by a member or a spouse beneficiary who wishes to rollover an eligible distribution; eliminates the requirement that a letter from the office responsible for birth records stating that a birth certificate is not available be provided if the member or beneficiary does not have a birth certificate. Other changes are to correspond with the actual language of the statute.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the Form 6025 to clarify that it is to be used by a member or a spouse beneficiary who wishes to rollover an eligible distribution, member's retirement application and to make the verification of birth date process easier for members and beneficiaries without birth certificates.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment amends the Form 6025 to clarify that it is to be used by a member or a spouse beneficiary who wishes to rollover an eligible distribution as they are eligible to do under federal tax law and to make the verification of birth date process easier for members and beneficiaries without birth certificates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by updating the Forms 6025 and will make it easier for members and beneficiaries without birth certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members who will file an application to retire from KERS, CERS, and SPRS who wish to rollover an eligible distribution will

be required to complete the updated Form 6025 and members and their beneficiaries without birth certificates.

(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 complete the updated form and submit birth verification.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are none.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

#### 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:

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

105 KAR 1:240. Death after retirement procedures.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-

78.852

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the board to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. Certain retirement benefits are payable upon the death of a recipient. This administrative regulation sets out the information required before benefits are paid.

Section 1. After learning of the death of a recipient, the retirement system shall contact the named beneficiary or estate of the deceased.

Section 2. The retirement system shall require the following information:

(1) A copy of the recipient's death certificate. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may also require additional evidence relating to the cause of death or investigations and arrests by enforcement agencies and may delay benefits until it deems the cause of death to be fully explained.

(2) If there is a benefit payable to a beneficiary and the beneficiary is deceased, a copy of the beneficiary's death certificate.

(3) If the beneficiary is a minor child, a copy of the child's birth verification (certificate) and a "Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor".

(4) If the beneficiary is divorced from the recipient, a copy of the divorce decree.

(5) If the beneficiary is the surviving [a] spouse of the deceased member and the spouse elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or \$5,000 Death Benefit (chooses to rollover a lump sum benefit), a "Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution".

(6) If the beneficiary is not the surviving spouse of the deceased member and the nonspouse beneficiary elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or \$5,000 Death Benefit, a "Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution".

Section 3. If the payments are due an estate, the retirement system shall also require a copy of the court order appointing an executor or administrator of the estate, or a copy of the court order dispensing with formal administration of the estate on which the payments due the estate are listed, [verification of the name of the individual authorized to manage the financial affairs of the deceased.]

Section 4. The beneficiary or authorized individual shall sign a "Form 6860, Affidavit for Recipient of Death Benefits", provided by the retirement system.

Section 5. Payments shall not be made until the affidavit has been completed and all verification submitted.

Section 6. (1) A recipient shall complete a "Form 6130 Authorization for Deposit of Retirement Payment", to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new "Form 6130, Authorization for Deposit of Retirement Payment", and filing the form at the retirement office in Frankfort.

(b) The last "Form 6130, Authorization for Deposit of Retirement Payment", on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a Form 6135, "Request for Payment by Check" if the recipient does not currently have an

account with the financial institution or the recipient's financial institution does not participate in the electronic funds transfer program.

(5) No payments shall be made until all required information, documents, and forms are received at the retirement office. [The retirement office shall not process the retirement allowance until the recipient has filed a completed "Form 6130, Authorization for Deposit of Retirement Payment", or filed a completed "Form 6135, Request for Payment by Check".]

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

(a) "Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, May 2003", Kentucky Retirement Systems;

(b) "Form 6860, Affidavit for Recipient of Death Benefits, July 2004", Kentucky Retirement Systems;

(c) "Form 6130, Authorization for Deposit of Retirement Payment, October 2002", Kentucky Retirement Systems;

(d) "Form 6135, Request for Payment by Check, February 2002", Kentucky Retirement Systems; and

(e) "Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, May 2007 [June 2004]", Kentucky Retirement Systems; and [.]

(f) "Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, May 2007", Kentucky Retirement Systems.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from Kentucky Retirement Systems, Penmeter Park West, 1260 Louisville Road, Frankfort, Kentucky, between 8 a.m. and 4.30 p.m. Monday through Friday.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 17, 2007

FILED WITH LRC: June 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2007, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the 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 31, 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for procedures for payment of death benefits from the member account upon death of a recipient after retirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures for payment of benefits from the recipient account upon death after retirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes provide for payment of benefits from the recipient account in KERS, CERS, and SPRS upon death of a recipient after retirement.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the procedures and forms for payment of benefits from the recipient account upon death after retirement.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that a court order is needed for someone to act on behalf of an estate, amends the Form 6025 limit its use to spouse beneficiaries who rollover an eligible rollover distribution and adds a new Form 6026 for a non-spouse beneficiary to rollover an eligible rollover distribution.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the form for a non-spouse beneficiary to rollover an eligible rollover distribution as provided in the federal Pension Protection Act of 2006 and to clarify that a court order is necessary for someone to act on behalf of an estate.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes provide that the agency will comply with applicable federal laws and also provide that the agency will administer the retirement accounts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing the forms for payment to a spouse or non-spouse beneficiary where the recipient has died after retirement and clarifying the need for a court order in order to act on behalf of an estate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those individuals or entities affected by this administrative regulation are those non-spouse beneficiaries and estates of the retired recipients who die after retirement.

(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 complete the appropriate form and submit the appropriate court order.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to rollover eligible distributions or benefits on behalf of the estate.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

#### 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:

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

##### 105 KAR 1:270. Special federal income tax withholding.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with the provisions of Pub.L. 102-318 regarding direct rollovers of distributions and the withholding of federal income tax. This administrative regulation establishes the procedure for informing affected members of their rights with regard to federal taxation rules and provides forms for members to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not return the form required for federal income tax purposes within a reasonable time.

Section 1. (1) Upon receipt of a request for refund of member contributions from the member ~~[or beneficiary who is the spouse]~~, the retirement office shall mail the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments to the member ~~[individual]~~ requesting payment.

(2) The member ~~[or beneficiary who is the spouse]~~ shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection and return it to the retirement office. If the member ~~[or beneficiary]~~ intends to have the funds rolled over directly into an IRA or other plan, the member ~~[or beneficiary]~~ shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The refund of contributions shall not be processed until the completed Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection is returned by the member ~~[or beneficiary]~~ to the retirement office.

Section 2. (1) Upon receipt of the Form 6010, Estimated Retirement Allowance, on which the member ~~[or beneficiary who is the spouse]~~ has selected the actuarial refund or partial lump sum [a payment option payable for a period of less than ten (10) years], the retirement office shall mail to the member ~~[or beneficiary who is the spouse]~~ the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump Sum and Monthly Payments], along with the Special Tax Notice Regarding Payments.

(2) The member ~~[or beneficiary who is the spouse]~~ shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution ~~[Lump-Sum-and-Monthly-Payments]~~, and return it to the retirement office. If the member ~~[or beneficiary who is the spouse]~~ intends to have the funds rolled over directly into an IRA or other plan, the member ~~[or beneficiary]~~ shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment options selected by the member ~~[or beneficiary who is the spouse]~~ shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution ~~[Lump-Sum-and-Monthly-Payments]~~, is returned to the retirement office.

Section 3. (1) Upon receipt of the Form 6010, Estimated Retirement Allowance on which the beneficiary who is the surviving spouse of the deceased member has selected the actuarial refund or sixty (60) months certain payment option, the retirement office shall mail to the beneficiary who is the surviving spouse of the deceased member the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.

(2) The beneficiary who is the surviving spouse of the deceased member shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office. If the beneficiary who is the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment options selected by the beneficiary who is the surviving spouse of the deceased member shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

Section 4. (1) Upon receipt of the Form 6010, Estimated Retirement Allowance on which the beneficiary who is not the surviving spouse of the deceased member has selected the actuarial refund or a 60 months certain payment option, the retirement office shall mail to the beneficiary who is not the surviving spouse of the deceased member the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.

(2) The beneficiary who is not the surviving spouse of the deceased member shall complete the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office. If the beneficiary who is not the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is not the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment option selected by the beneficiary who is not the surviving spouse of the deceased member shall not be processed until the completed Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

Section 5.[3] (1) If the alternate payee is eligible for a lump sum portion of the member's contribution account under a qualified domestic relations order, the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with the Special Tax Notice Regarding Payments shall be mailed to the alternate payee. If the alternate payee is eligible to select a payment option and selects an actuarial refund or partial lump sum [payment option payable for a period of less than ten

(40) years], a Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum-and-Monthly-Payments], along with the Special Tax Notice Regarding Payments shall be mailed to the alternate payee.

(2) The alternate payee shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum-and-Monthly-Payments], and return it to the retirement office. If the alternate payee intends to have the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the back of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or Form 6025, Direct Rollover/Direct Payment Election Form for a Member or Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum-and-Monthly-Payments], certifying that the rollover will be accepted.

(3) The payment of an actuarial refund or partial lump sum [a payment option of less than ten (40) years] under the qualified domestic relations order shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum-and-Monthly-Payments], is returned to the retirement office. If the payment is a portion of the member's contribution account and the alternate payee does not return the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, within thirty (30) days of receipt of the form, the payment shall be processed and the alternate payee's portion of the refund shall be treated for federal income tax purposes as if the alternate payee had made an election to receive the funds.

Section 6 (1) A member who was last employed as a "qualified public safety employee" as defined in Internal Revenue Code, Section 72(t), may file a Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the ten (10) percent Early Distribution Penalty in IRC 72(t) to avoid the ten (10) percent early distribution tax penalty when electing to receive an actuarial refund, lump sum refund, partial lump sum refund, or the ten (10) years certain option.

(2) The member who was last employed as a "qualified public safety employee" shall file the Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t) with the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution at the retirement office in order to avoid the ten (10) percent early distribution tax penalty.

Section 7[4] Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, May 2007 [June 2002]", Kentucky Retirement Systems;

(b) "Special Tax Notice Regarding Payments, May 2007 [January 2002]", Kentucky Retirement Systems;

(c) "Form 6010, Estimated Retirement Allowance, July 2004 [2002]", Kentucky Retirement Systems;

(d) "Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution [Lump-Sum-and-Monthly-Payments], May 2007 [June 2002]", Kentucky Retirement Systems.

(e) "Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, May 2007," Kentucky Retirement Systems; and

(f) "Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), May 2007" Kentucky Retirement Systems.

(2) This material may be inspected, copied, or obtained, sub-

ject to applicable copyright law, at the Kentucky Retirement Systems, Penimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 17, 2007

FILED WITH LRC: June 15, 2007 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD.** A public hearing on this administrative regulation shall be held on July 25, 2007, at 9 a.m. at the Kentucky Retirement Systems, Penimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2007, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the 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 31, 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:** J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-88000 ext. 5501, fax (502) 696-8801.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for informing affected members of their rights with regard to federal taxation rules and provides forms for members to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not return the form required for federal income tax purposes within a reasonable time.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out treatment of accounts with regards to federal taxation rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the requirements of federal taxation rules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation details the procedures and forms necessary for determining federal tax withholding under federal taxation rules.

(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 provides for updating of forms required to be filed with the retirement system for federal tax withholding consideration and rollovers and the creation of new forms for rollovers of eligible distributions by non-spouse beneficiaries and certifications by "qualified public safety employees" to avoid the 10% early distribution penalty in IRC 72(t).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the forms required to be filed with the retirement system for federal tax withholding consideration, create additional forms for non-spouse beneficiary and certification by "qualified public safety employees" to avoid the 10% early distribution penalty in IRC 72(t).

(c) How the amendment conforms to the content of the authorizing statutes: The federal taxation rules provide for the recipient to eligibility for exceptions to tax penalties, indicate federal tax withholding or direct rollover of funds. The amendment updates the forms and creates new forms.

(d) How the amendment will assist in the effective administration

tion of the statutes. The amendment will assist in the effective administration of the statutes by updating the revised forms for federal income tax considerations, providing forms for non-spouse beneficiaries, and certifications by "qualified public safety officers." List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Recipients receiving a retirement benefit from KERS, CERS, and SPRS will need to identify a federal tax withholding preference and will be affected. "Qualified public safety officers" as defined in IRC 72(t) who wish to avoid the early distribution penalty.

(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 complete a form as they already are required to do.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to have to appropriate amount of federal taxes withheld or to rollover their distributions. "Qualified public safety officers" as defined in IRC 72(t) will be able to avoid the early distribution penalty.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

#### 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?

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:

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(Amendment)**

**105 KAR 1:380. Minimum distribution.**

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 26 C.F.R. 1.401(a)(9)-9, 26 U.S.C. 401(a)(9)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. This administrative regulation establishes minimum distribution requirements in compliance with 26 U.S.C. 401(a)(9).

Section 1. Definitions. (1) "Life expectancy" means life expectancy as computed by use of the Single Life Table in 26 C.F.R. 1.401(a)(9)-9 of the Treasury administrative regulations.

(2) "Member" means a member of a retirement fund established under KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, and administered by the Kentucky Retirement Systems.

(3) "Required beginning date" means April 1 of the calendar year following the later of:

- (a) The calendar year in which the member attains age seventy and one-half (70 1/2); or
- (b) The calendar year in which the member retires.

Section 2. (1) This administrative regulation shall:

(a) Apply for purposes of determining required minimum distributions;

(b) Comply with the requirements of 26 U.S.C. 401(a)(9); and

(c) Apply to members of a fund established under KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.

(2) All distributions required under this administrative regulation shall be determined and made in accordance with ~~treasury~~ final administrative regulations under 26 U.S.C. sec 401(a)(9).

(3) The requirements of 26 U.S.C. sec 401(a)(9) shall take precedence over any inconsistent provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.

Section 3. (1) The member's entire interest shall be distributed, or begin to be distributed, to the member no later than the member's required beginning date.

(2) If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, no later than as follows:

(a) If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2), if later.

(b) If the member's surviving spouse is not the member's sole designated beneficiary, then distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(d) If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, Section 2(2)(b) and (c) shall apply as if the surviving spouse were the member. Section 2(2)(a) shall not apply in this situation.

(3) For purposes of Sections 2(2)(a) through (c) and 5 of this administrative regulation, distributions shall be considered to begin on the member's required beginning date. If Section 2(2)(d) of this

section applies, distributions shall be considered to begin on the date distributions shall be required to begin to the surviving spouse under Section 2(2)(a) of this section. If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 2(2)(a) of this section, the date distributions are considered to begin is the date distributions actually commence.

Section 4. (1) If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in periodic payments made at intervals not longer than one (1) year;

(b) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in Section 4 or 5 of this administrative regulation;

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted; and

(d) Payments shall increase only as follows:

1. By the annual percentage increase provided for under KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852;

2. To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 4 of this administrative regulation dies, or if the beneficiary is the member's spouse and they divorce, as provided in KRS 61.635(10);

3. To provide cash refunds of employee contributions upon the member's death; or

4. To pay any increased benefits that result from a plan amendment.

(2) The amount that shall be distributed on or before the member's required beginning date, or if the member dies before distributions begin, the date distributions are required to begin under Section 2(2)(a) or (b) of this administrative regulation, is the payment that is required for one (1) month. The second payment shall not be required to be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for months ending on or after the member's required beginning date

Section 5. (1) If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death shall not at any time exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence shall apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2) Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime shall not exceed the applicable distribution period for the member under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches age seventy (70), the applicable distribution period for the member is the distribution period for age seventy (70) under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the treasury regulations plus the excess of seventy (70) over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain shall not exceed the longer of



the member's applicable distribution period, as determined under this subsection, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the joint and last survivor table set forth in section 1.401(a)(9)-9 of the treasury regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

Section 6. (1) If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the entire interest payable to the member shall be distributed, beginning no later than the time described in Section 2(2)(a) or (b) of this administrative regulation, over the life of the designated beneficiary or over a period certain not exceeding:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(3) If the member dies before the date distribution of his or her interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, then this section shall apply as if the surviving spouse were the member, except that the time by which distributions are required to begin shall be determined without regard to Section 2(2)(a) of this administrative regulation.

Section 7. KRS 61.645(9)(g) and this administrative regulation implement the statutory requirements of IRC Section 401(a)(9) and are meant to be a reasonable good faith interpretation of those statutory requirements.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 17, 2007

FILED WITH LRC: June 15, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2007 at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2007 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the 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 31, 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation provides for compliance with the minimum distribution requirements of 26 U.S.C. 401(a)(9).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and qualifications for compliance with the minimum distribution requirements of 26 U.S.C. 401(a)(9).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Retirement Systems to maintain its status as a public defined benefit plan under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide procedures for determining the required minimum distributions to be made in accordance with 26 U.S.C. 401(a)(9).

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a Safe Harbor provision in compliance with the provisions of the Pension Protection Act of 2006.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to add the Safe Harbor provision to the administrative regulation in accordance with the provisions of the Pension Protection Act of 2006.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is necessary for adding the Safe Harbor Provision to the administrative regulations as provided in the Pension Protection Act of 2006.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by adding the Safe Harbor provision as provided in the Pension Protection Act of 2006.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will not affect any individuals, businesses, organizations, or state and local governments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are none.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are none.

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

(a) Initially. There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, only Kentucky Retirement Systems is affected.

#### 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 BOARD OF DENTISTRY  
General Government Cabinet  
(Amendment)**

**201 KAR 8:450. Dental hygienist services when supervising dentist not physically present.**

RELATES TO: KRS 313.010(3), 313.310

STATUTORY AUTHORITY: KRS 313.270(2), 313.310(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.270(2) and 313.310(2), (3), and (4) authorize the board to promulgate regulations regarding the practice of dental hygiene. This administrative regulation establishes requirements for dental hygienists to provide dental hygiene services when the supervising dentist is not present.

Section 1. (1) In order to provide dental hygiene services pursuant to KRS 313.310(3), a dental hygienist shall provide documentation to the board of the required experience.

(2) The documentation shall include:

(a) Payroll or employment records showing dates and hours of employment by a dentist in the practice of dental hygiene; or

(b) Other proof that is independently verifiable.

(3) Proof of hours or experience shall be:

(a) Retained by the hygienist; and

(b) Attached to the form "Dental Hygiene-GS".

(4) The supervising dentist shall retain a copy of this form at his or her office.

Section 2. (1) A dental hygienist providing dental hygiene services pursuant to KRS 313.310(3) shall successfully complete a course approved by the Kentucky Board of Dentistry in the identification and prevention of potential medical emergencies.

(2) The board-approved course shall:

(a) Be at least three clock (3) hours in duration;

(b) Be classified as a "B" category for continuing education under 201 KAR 8:140; and

(c) Include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists classifications of physical status;

2. Recognition of common medical emergency situations, symptoms and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(3) The dental hygienist shall retain proof of recertification every two (2) years in the medical emergency course. This course

shall be classified as a "B" or "C" category continuing education course under 201 KAR 8:140 and be at least three (3) clock hours in duration.

Section 3. A dental hygienist providing services pursuant to KRS 313.310(3) shall provide only those services established in KRS 313.010(3).

Section 4. (1) The supervising dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to KRS 313.310(3) shall.

(a) Complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist; and

(b) Retain the original order in the patient's dental record.

(2) The minimum requirements for the written order shall include:

(a) Medical history update;

(b) Radiographic records requested;

(c) Dental hygiene procedures requested;

(d) Name of the patient;

(e) Date of last oral examination;

(f) Date of the written order; and

(g) Signature of the dentist.

(3) The oral examination of the patient by the supervising dentist shall have been completed within seven (7) months of the treatment by the dental hygienist practicing under general supervision.

Section 5. The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills necessary to perform dental hygiene services under this administrative regulation, by filing form "Dental Hygiene-GS", with the board. The supervising dentist and hygienist shall retain a copy of this form at the work site of the dental hygienist.

Section 6. The supervising dentist shall provide a written protocol addressing the medically-compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the American Society of Anesthesiologists classification of Physical Status I and II as listed in "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry", Part 2 (2000 Edition), American Dental Association.

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

(a) "Dental Hygiene-GS" form dated June 2007 [8/14/2002], Kentucky Board of Dentistry; and

(b) "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part 2 (2000 Edition), American Dental Association.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID NARRAMORE, President

APPROVED BY AGENCY: May 30, 2007

FILED WITH LRC: May 30, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation amendment shall be held on July 31, 2007, at 10 a.m., at the Kentucky Board of Dentistry, located at 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by July 24, 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 amendment. A transcript of the public hearing will not be made unless a written request for a written 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 amendment. Written comments shall be accepted until July 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

**CONTACT PERSON:** Eric T. Clark, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Eric T. Clark, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for dental hygienists to provide dental hygiene services when the supervising dentist is not present.

(b) The necessity of this administrative regulation: To update the "Form Dental Hygiene-GS".

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 313.310 requires the board to regulate the general supervision requirements for dental hygienists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The application for general supervision provides information from an applicant that is needed for the Board of Dentistry to verify the training required by law for dental hygienists to practice dental hygiene when their employing dentist is not present.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the General Supervision Application Form that is incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: To update the General Supervision Application Form.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 313.270(2) and 313.310(2) authorizes the Board of Dentistry to promulgate administrative regulations regarding the practice of dental hygiene and the practice of dental hygiene when a supervising dentist is not present.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Kentucky Board of Dentistry obtain additional information from dental hygienists applying for general supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment could affect approximately 2,051 dental hygienists, who may apply to the board for general supervision privileges.

(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: Dental hygienists applying for general supervision privileges will have to complete additional questions on the general supervision application.

(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). Applicants for general supervision will provide additional information for the Board to evaluate their application.

(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. 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: No increase in fees will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment to the regulation would not establish or increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because the same standards govern all persons within the appropriate section of the 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)? 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:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

##### 501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), 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 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 Luther Luckett Correctional Complex.

Section 1. Incorporation by Reference. (1) "Luther Luckett Correctional Complex policies and procedures," June 15, 2007 [June 10, 2003], are incorporated by reference. Luther Luckett Correctional Complex Policies and Procedures include:

[LLCC-01-01-01 Establishment of the Institutional Operations Manual  
LLCC-01-01-02 Organization of Operations Manual  
LLCC-01-02-01 Organization and Assignment of Responsibility  
LLCC-01-02-02 Institutional Planning

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LLCC 01-03-01	Staff Meetings Conducted and Their Purpose	LLCC 06-02-01	Records - Release of Information
LLCC 01-04-01	Monthly Report and Performance Criteria	LLCC 06-03-01	Procedure for Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
LLCC 01-06-01	Inmate Access To and Communication With LLCC	[LLCC 06-04-01	Storage of Void Disciplinary Records]
LLCC 01-06-02	Public Information and Media Communications	LLCC 06-05-01	Psychological and Psychiatric Reports
LLCC 01-11-01	LLCC Cooperation with Other Agencies	[LLCC 07-02-01	Preventative Maintenance Plan
LLCC 01-11-02	Luther Luckett Correctional Complex (LLCC) and Kentucky Correctional Psychiatric Center (KCPC) Shared Services (Amended 4/15/03)	LLCC 07-06-01	Control of Hazardous Energy Lockout and Tagout
LLCC 01-12-01	Duty Officer Responsibilities (Amended 4/15/03)	LLCC 07-07-01	Permit Required Confined Spaces
LLCC 01-13-01	Smoking LLCC Facility	LLCC 08-01-01	Institutional Emergency Preparedness Plan
LLCC 02-01-02	Fiscal Management Accounting Procedures (Amended 4/15/03)	LLCC 08-02-01	Control of Caustic, Toxic, Flammable, Hazardous and Other Chemicals
LLCC 02-01-03	Fiscal Management Agency Funds (Amended 4/15/03)	LLCC 08-03-01	Emergency Squad Selection, Training and Evaluation]
LLCC 02-01-04	Fiscal Management Insurance	LLCC 08-04-01	Fire Safety
LLCC 02-02-01	Fiscal Management Organization and Budget (Amended 4/15/03)	[LLCC 09-01-01	Development of Institutional Post Orders
LLCC 02-03-01	Fiscal Management Audits	LLCC 09-02-01	Security Activity Logs]
LLCC 02-04-01	Purchase and Supply Requisitions (Amended 4/15/03)	LLCC 09-14-02	Guidelines for Contractors
LLCC 02-05-01	Warehouse Operation and Inventory Control	LLCC 09-18-01	Search Plan
LLCC 02-05-02	Warehouse Schedule (Amended 4/15/03)]	LLCC 09-18-03	Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence
LLCC 02-05-03	Inmate Canteen Committee (Amended 4/15/03)	[LLCC 09-20-03	Tool and Equipment Control]
LLCC 02-05-05	Inmate Canteen	LLCC 09-25-01	Procedure for Maintaining Current Inmate Photographs
LLCC 02-06-01	Inmate Control of Personal Funds (Amended 4/15/03)	LLCC 09-29-01	Inmate Death
LLCC 02-06-02	Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 a.m. Weekdays	LLCC 10-01-01	Special Management Inmates
[LLCC 03-01-01	General Guidelines and Information for Luther Luckett Correctional Complex Employees (Added 6/10/03)	LLCC 11-01-01	Dining Room Guidelines
LLCC 03-01-02	Attendance and Leave Requirements (Added 6/10/03)	LLCC 11-02-01	Food Services: Security (Amended 4/15/03)
LLCC 03-01-03	Employee Time and Attendance Abuse Program (Added 6/10/03)	LLCC 11-03-01	Food Services: General Guidelines (Amended 4/15/03)
LLCC 03-02-01	Operation of State and Staff-owned Vehicles (Amended 6/10/03)	LLCC 11-04-01	Food Service Meals (Amended 4/15/03)
LLCC 03-03-01	Employee Grievance (Added 6/10/03)	LLCC 11-04-02	Food Service: Menu, Nutrition and Special Diets (Amended 4/15/03)
LLCC 03-04-01	Organization of Payroll and Personnel Records (Added 6/10/03)	LLCC 11-05-02	Health Requirements of Food Handlers (Amended 4/15/03)
LLCC 03-05-01	Personnel Registers (Added 6/10/03)	LLCC 11-06-01	Food services: Inspections and Sanitation (Amended 4/15/03)
LLCC 03-06-01	Employee Evaluations (Added 6/10/03)	LLCC 11-07-01	Food Services: Purchasing, Storage and Farm Products (Amended 4/15/03)
LLCC 03-06-02	Initial Probation Employees (Added 6/10/03)	LLCC 12-01-01	Sanitation, Living Condition Standards and Clothing Issues
LLCC 03-07-01	Drug-Free Workplace (Added 6/10/03)	LLCC 12-02-01	Laundry Services
LLCC 03-08-01	Security Staffing Guidelines Shift Transfers, Rotations, and Off Days (Added 6/10/03)	LLCC 12-03-01	Vermin and Insect Control
LLCC 03-08-02	Security Staffing Guidelines Post Announcements and Post Assignments (Added 6/10/03)	LLCC 12-04-01	Personal Hygiene Items: Issuance and Replacement Schedule
LLCC 03-09-01	Promotions, Lateral Transfers, Internal Mobility Program (Added 6/10/03)	[LLCC 13-01-01	Organization of Health Care Services
LLCC 03-10-01	Affirmative Action Plan Equal Employment Opportunity (Added 6/10/03)	LLCC 13-01-02	Licensure and Training Standards]
LLCC 03-11-01	Kentucky Employee Assistance Program (Added 6/10/03)	LLCC 13-01-03	First Aid and CPR Training Program
LLCC 03-12-01	Personnel Staffing Review (Added 6/10/03)	LLCC 13-02-01	Health Care Maintenance Services: Sick Call and Pill Call
LLCC 03-13-01	Employee and Supervisor Recognition Program (Added 4/15/03)	LLCC 13-02-02	Specialized Health Services
LLCC 03-14-01	Employee Separation Clearance Procedures (Added 6/10/03)	LLCC 13-02-03	Vision Care and Optometry Services
LLCC 04-01-01	Employee Training and Development (Amended 6/10/03)	LLCC 13-02-04	Emergency Medical, Dental Care and Mental Health
LLCC 04-01-02	Tuition Assistance and Educational Achievement Award	LLCC 13-02-05	Medical Services Copay
LLCC 04-01-03	Staff Participation in Professional Organizations and Conferences; Provisions for Leave and Reimbursement for Expenses	LLCC 13-03-01	Mental Health Services
LLCC 04-03-01	Suicide Intervention and Prevention Training Information System]	LLCC 13-03-02	Use of Psychotropic Medications
LLCC 05-02-02	Outside Consultation and Research	LLCC 13-04-01	Inmate Medical Screenings and Health Evaluations
[LLCC 06-01-01	Offender Records (Amended 4/15/03)	LLCC 13-04-02	Health Education and Special Health Programs
LLCC 06-01-02	Use of Inmate Records on the Compound (Amended 4/15/03)]	LLCC 13-05-01	Medication Receipt, Storage, Dispensing and Administration
		LLCC 13-05-02	Self-administration of Medication (Inmate)
		LLCC 13-06-01	Health Records
		LLCC 13-06-02	Informed Consent
		LLCC 13-06-03	Notice of Inmate Family in the Event of Serious Illness, Surgery or Inmate Death
		LLCC 13-07-01	Serious and Infectious Diseases
		LLCC 13-07-02	Medical Waste Management
		LLCC 13-08-01	Medical Restraints
		LLCC 13-09-01	Substance Abuse and Chemical Dependency Program

LLCC 14-01-01	Inmate Rights and Responsibilities
LLCC 14-03-01	Inmate Legal Services
LLCC 15-01-02	Inmate Housing Agreement
LLCC 15-01-03	Operational Procedures of the Units
LLCC 15-01-04	Rules and Regulations of the Unit
LLCC 15-01-08	Searches and Control of Excess Property
LLCC 15-01-09	Laundry Unit Services
LLCC 16-01-01	Inmate Correspondence
LLCC 16-01-02	Inmate Privileged or Legal Mail
LLCC 16-01-03	Inmate Packages
LLCC 16-02-01	Inmate Visiting
LLCC 16-02-02	Extended and Special Visits
LLCC 16-02-03	Restricted Visitation Privileges
LLCC 16-03-04	Parole Hearings: Media and Visitors
LLCC 17-01-01	Inmate Transportation, Reception and Discharge Process (Amended 4/15/03)
LLCC 17-03-01	Assessment and Orientation
LLCC 17-04-01	Personal Property Control
LLCC 17-04-02	Missing or Stolen Inmate Personal Property
LLCC 17-05-01	Appliances to Outside Dealers for Repair
LLCC 18-01-01	Mentorship Housing
LLCC 18-02-01	Minimum Security Unit Operations
LLCC 19-01-02	Job Assignments and Dismissals
LLCC 19-01-03	Unassigned Status
LLCC 20-01-01	Education Programs
LLCC 21-01-01	Library Services
LLCC 21-02-01	Staff Library and Information Services
LLCC 22-01-01	Recreation and Inmate Activities
LLCC 22-02-01	Inmate Clubs and Organizations
LLCC 22-02-02	Inmate Photographs Project
LLCC 22-05-02	Arts and Crafts Program
LLCC 23-01-01	Religious Program
LLCC 23-01-03	Death or Other Emergency of Family Member and Notification of Inmates
LLCC 24-01-01	Counseling and Social Services (Amended 4/15/03)
LLCC 25-01-01	Final Release (Amended 4/15/03)
LLCC 26-01-01	Citizen Involvement and Volunteer Services Program (Amended 6/10/03)
LLCC 26-02-01	Use of Interns and Students (Amended 6/10/03)
LLCC 26-02-02	Student and Volunteer Identification Badges and Parking Tags (Amended 6/10/03)
LLCC 26-03-01	Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Students, Interns and Volunteers (Amended 4/15/03)

(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 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: June 11, 2007

FILED WITH LRC: June 15, 2007 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD.** A public hearing on this proposed administrative regulation shall be held on July 23, 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 31, 2007 to:

**CONTACT PERSON:** 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Luther Luckett Correctional Complex 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 Luther Luckett Correctional Complex.

(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 deletes policies which are outdated, duplicative, or unnecessary due to their internal nature under KRS 13A.010(2)(a) and KRS 13A.100(1).

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS Chapter 13A, 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies current regulatory policy of LLCC by deleting policies which are outdated, duplicative, or unnecessary.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies and streamlines current regulatory policy of LLCC.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Luther Luckett Correctional Complex 248 employees and 1,047 inmates, and all visitors.

(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:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action as amendment merely deletes unnecessary policies.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By streamlining and clarifying the policies and procedures of LLCC, employees, inmates, and visitors will be able to better understand their rights and responsibilities.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Luther Luckett Correctional Complex 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 fees established or increased by amendments.

(9) TIERING Is tiering applied? No. Tiering was not appropriate.

ate 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 Luther Luckett Correctional Complex.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, 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 Luther Luckett Correctional Complex 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 Luther Luckett Correctional Complex 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 Luther Luckett Correctional Complex 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 Luther Luckett Correctional Complex 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:

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET Kentucky State Board on Electric Generation and Transmission Siting (Amendment)

#### 807 KAR 5:110. Board proceedings.

RELATES TO: KRS 278.702(3)

STATUTORY AUTHORITY: KRS 278.040(3)

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 creates the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Written communication may be addressed to "Kentucky State Siting Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 406012".

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.

(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct a merchant electricity generating plant or nonregulated transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of such a Notice, the Notice shall automatically expire without further notice to the applicant.

(2) A Notice of Intent to File Application shall include:

(a) The name, address, and telephone number of the person who intends to file the application;

(b) A brief description of the proposed construction that will be the subject of the application;

(c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;

2. The street address and latitude and longitude of the site of the construction to be proposed; and

3. Whether the proposed construction will be within the boundaries of a city;

(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to whether a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings. (1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601.

(2) A paper copy of an application shall:

(a) Be in a bound volume with each document tabbed; and

(b) Contain a table of contents that lists, for each document enclosed,

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine whether the application is administratively complete and shall inform the applicant of its determination by letter.

(4) The secretary may reject for filing any document that on its face does not comply with an administrative regulation of the board.

Section 4. Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown.

(a) That he has a special interest in the proceeding; or

(b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

**Section 5. Confidential Material.** (1) Material on file with the board shall be available for examination by the public unless the material is determined to be confidential.

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the Executive Director. The petition shall:

1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, set forth each basis upon which the petitioner believes the material should be classified as confidential; and

2. Attach one (1) copy of the material which identifies, by underscoring, highlighting with transparent ink, or other reasonable method, only the portion alleged to be confidential. A text page or portion thereof which does not contain confidential material shall not be included in the identification.

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with the portion for which confidentiality is sought obscured, shall be filed with the board.

(c) The petition and a copy of the material, with only the portion for which confidentiality is sought obscured, shall be served on each party. The petition shall contain a certificate of service on each party.

(d) The burden of proof to show that the material is exempt from the disclosure requirements of the Kentucky Open Records Act shall be upon the person requesting confidential treatment.

(e) A person may respond to the petition for confidential treatment within five (5) days after it is filed with the board.

(3) Pending action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to petition the board directly or to seek other remedy afforded by law.

(5) Procedure for requesting access to confidential material filed in any proceeding.

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or any other party to the proceeding. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, it shall follow the "Procedure for Determining Confidentiality" in subsection (2) of this section. A party's response to a discovery request shall be served upon each party, with only the portion for which confidential treatment is sought obscured.

(b) If confidential protection is granted and if each party has not entered into a protective agreement, then a party may petition the board requesting access to the material on the basis that it is essential to a meaningful participation in the proceeding. The petition shall include a description of any effort made to enter into a protective agreement. Unwillingness to enter into a protective agreement shall be fully explained. A party may respond to the petition within five (5) days after it is filed with the board. The board shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Request for access to records pursuant to KRS 61.870-61.884. A time period prescribed in this section shall not limit the right of a person to request access to a board record pursuant to KRS 61.870-61.884. Upon a request filed pursuant to KRS 61.870-61.884, the board shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for requesting access to confidential material. A person denied access to a record requested pursuant to KRS 61.870-61.884 or to material deemed confidential by the board in accordance with the procedure set out in this section, may obtain the information only pursuant to KRS 61.870-61.884, and other applicable law.

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the board prior to the use of the material.

(b) Except for members of the board or its staff, a person not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(9) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(10) The petitioner who sought confidential protection shall inform the executive director in writing if when any material granted confidentiality becomes publicly available.

**Section 6. Evidentiary Hearings.** (1) Upon its own motion or on written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board may schedule an evidentiary hearing.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of evidence before the board, the objecting party shall state briefly the basis for his objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

**Section 7. Filing of Briefs.** A party of record may file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

**Section 8. Local Public Hearings.** (1) A local public hearing may be conducted before the board or before a person designated by the board to conduct a specific hearing;

(2) A request for a local public hearing shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least twenty (20) days before the hearing date, give notice of the hearing to:

(a) All parties to the proceeding;

(b) The judge/executive of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.

(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing.

(5) Within seven (7) calendar days after the local public hearing, administrative staff for the board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing that:

(a) Identifies each person who made oral comments; and

(b) Summarizes the comments received.

**Section 9. Notice Requirements.** (1) Notice of an evidentiary hearing. At least five (5) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a



newspaper of general circulation in the county or municipality in which the plant or transmission line is proposed to be located.

(2) Notice of a local public hearing. At least five (5) days before the hearing date, the applicant shall submit to the board proof that it has given the general public notice of the hearing in a newspaper of general circulation in the county or municipality in which the plant or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the notice the following information:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene;

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and

(c) A request for a local public hearing shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the plant or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application.

JOHN W. CLAY

For MARK DAVID GOSS, Chairman  
APPROVED BY AGENCY: June 1, 2007  
FILED WITH LRC: June 6, 2007 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 25, 2007 at 10 a.m. at the Public Service Commission's office, Hearing Room 2, 211 Sower Boulevard, Frankfort, Kentucky 40602. Individuals interested in attending this hearing shall notify this agency in writing by July 18, 2007, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Richard W. Bertelson, III, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, phone (502) 564-3940, fax (502) 564-3460.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard W. Bertelson, III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material under the jurisdiction of the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board).

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedural rules for the Siting Board to administer KRS 278.700-278.716.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective implementation of the statutes by ensuring that the Siting Board has procedures in place to process applications submitted to it.

(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 Section 2 will establish a termination

date for the vitality of a Notice of Intent. Section 5(10) is also amended to remove the word "when" in order to conform with the requirements of KRS 13A.224(4)(i), which provides, in pertinent part, that "[i]f shall be used to express conditions, rather than the words 'when' or 'where.'"

(b) The necessity of the amendment to this administrative regulation: Without such a change to Section 2, a Notice of Intent can continue to be effective indefinitely, regardless of the passage of time, change in circumstances, or other significant alterations from the time the Notice was issued. Without the change to Section 5(10) the regulation does not conform with the requirements of KRS 13A.222(4)(i).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment makes only a minor change in the Notice of Intent section and eliminates an unnecessary word from Section 5. The Notice of Intent section has been part of the administrative regulation from its promulgation. The amendment does not conflict with the statutes establishing the application requirement.

(d) How the amendment will assist in the effective administration of the statutes: Under the current administrative regulation, the Siting Board and the Public Service Commission must maintain the records and keep open the dockets for Notices of Intent indefinitely. This amendment to Section 2 will allow them to dismiss cases when the Notice is not followed up with an actual application within six months. The amendment to Section 5(10) is for the purpose of making the regulation conform with the statutory requirements of KRS 13A.222(4)(i).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals, businesses, organizations, and other entities that seek to construct merchant electric generation or transmission facilities.

(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 proposed administrative regulation will impact any party that files a Notice of Intent but then fails to subsequently file an application within six months. Such a party, however, may file a new Notice and then file an application as soon as thirty days from the filing of the new notice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): De minimis, if anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Except to ensure more timely and perhaps consistent Notices and Applications, none. The Public Service Commission will benefit by having more up-to-date and accurate records.

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

(a) Initially: Implementation of the administrative regulation does not involve costs in addition to those already implicated by statutory requirements.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No additional funding 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 funding increase is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not used in this proposed amendment. This amendment applies equally to all applicants for a certificate from the Siting Board, because there is no rational need to provide for a shorter or longer period of time for an applicant to file its application following the filing of its notice of intent based on applicable tiering principles.



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 proposed administrative regulation will impact any party that files a Notice of Intent but then fails to subsequently file an application within six months.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 278.702(3), 278.706, 278.714.

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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
Department for Public Health  
Division of Public Health Protection and Safety  
(Amendment)

902 KAR 105:010. Definitions for 902 KAR Chapter 105.

RELATES TO: KRS 211.870, 211.890, 211.993

STATUTORY AUTHORITY: KRS 194A.050 [494A.050], 211.090

**NECESSITY, FUNCTION, AND CONFORMITY:** The Cabinet for Health and Family Services [Human Resources] is authorized by KRS 211.870, 211.890 and 211.993 to regulate an operator [operators] of a source [sources] of radiation other than a licensed practitioner [practitioners] of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to define terms that are applicable to administrative regulations adopted by the cabinet relating to operators of sources of radiation.

**Section 1. Definitions.** (1) "Alternate course of study" means an independent nuclear medicine course of study that qualifies an individual to take an examination approved by the cabinet.

(2) "Authorized user" means a physician, dentist, or podiatrist identified on a radioactive materials license issued by the cabinet, U.S. Nuclear Regulatory Commission, or other agreement state that authorizes the medical use of radioactive materials.

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Certification" means the process by which a certificate of license is issued by the cabinet pursuant to this section and in

accordance with KRS 335B 010.

(5) "Certified radiation operator" means an individual who shall be licensed pursuant to the provisions of this administrative regulation to perform the duties of a radiographer, nuclear medicine technologist, or radiation therapist.

(6) "Clinical education" means the component of the educational program that shall provide an environment for supervised competency-based clinical education and experience and shall offer a sufficient and well-balanced variety of procedures using modern, accurately calibrated equipment.

(7) "Continuing education" means a learning activity that is planned, organized, and administered to enhance the professional knowledge and skills underlying professional performance that a certified radiation operator uses to provide services for patients, the public, or the medical profession. In order to qualify as continuing education an approval request shall be submitted to the Cabinet for Health and Family Services on form Kentucky CEU-001, Continuing Education Approval Request Radiation Operator Certification Program.

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

(9) "Course of study" means a basic curriculum in radiologic technology, nuclear medicine technology, or radiation therapy approved by the cabinet.

(10) "Didactic education" means the component of the educational program that shall provide formal instruction which has specific objectives and suitable methods for assessing the student's cognitive progress for entry-level competency.

(11) "General certificate" means a license issued by the cabinet authorizing an individual to perform diagnostic radiographic, nuclear medicine, or radiation therapy procedures.

(12) "General radiation operator" means an individual who has completed an accredited educational program and is prepared to administer ionizing radiation, accurately position patients, select equipment settings, assess the patient, and evaluate imaging or therapeutic outcomes following established professional standards of care within the relevant scope of practice.

(a) Only an individual certified as a general radiation operator shall be employed as an operator of a source of radiation at a facility where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are performed.

(b) Categories for a general radiation operator practice shall include:

1. Radiographer who shall be authorized to:

a. Perform a comprehensive scope of diagnostic-radiologic procedures using external ionizing radiation equipment;

b. Exercise responsibility for the operation of radiation-generating equipment, shielding the patient and staff from unnecessary radiation and the appropriate exposure of radiographs or other procedures which contribute to the site or dosage of ionizing radiation to which a patient is exposed; and

c. Provide patient care resulting in radiographic or digital images.

2. Nuclear medicine technologist who compounds, calibrates, dispenses, and administers radiopharmaceuticals, pharmaceuticals, and radionuclides under the direction of an authorized user for benefit of performing a comprehensive scope of nuclear medicine procedures for diagnostic and therapeutic purposes.

3. Radiation therapist who shall be authorized to utilize ionizing radiation-generating equipment and sources of radiation for the planning and delivery of therapeutic procedures on human beings.

4. Radiologist assistant who works under the supervision of a radiologist to enhance patient care by assisting the radiologist in the medical imaging environment.

(13) "Licensed practitioner" or "licensed practitioner of the healing arts" means a physician licensed in Kentucky to practice medicine, osteopathy, dentistry, chiropractic, podiatry, or veterinary medicine.

(14) "Limited certificate" means a license issued by the cabinet authorizing an individual to perform limited radiographic procedures in his specific field of practice or operation.

(15) "Limited x-ray machine operator" means an individual

who:

(a) Shall have completed an educational program approved by the cabinet and is prepared to:

1. Administer ionizing radiation;
2. Accurately position patients;
3. Select equipment settings;
4. Assess the patient;
5. Evaluate imaging; and

6. Follow established standards of care resulting in diagnostic radiographic images limited to select body anatomical sites.

(b) Shall not be employed as an operator of sources of radiation at a facility where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are performed; and

(c) Is certified by the cabinet and restricted to the following categories of practice:

1. Limited x-ray machine operator who shall be authorized to perform limited radiographic procedures, create images using ionizing radiation, and provide patient care.

2. Limited podiatry x-ray machine operator who shall be authorized to perform radiographic procedures of the feet and ankles only; and

3. Limited bone densitometry x-ray machine operator who shall be authorized to perform bone densitometry radiographic procedures only.

(16) "Limited radiographic procedures" means procedures that shall be performed by a limited x-ray machine operator.

(a) These procedures shall include

1. Routine chest and thorax;
2. Cranium;
3. Extremity;
4. Podiatric;
5. Vertebral column radiography; and
6. Bone densitometry procedures.

(b) The following procedures shall be excluded:

1. Contrast media;
2. Fluoroscopic equipment;
3. Mammography;
4. Computed tomography;
5. Bedside radiography;
6. Nuclear medicine; and
7. Radiation therapy procedures.

(17) "National organization" means a professional society or professional organization approved by the cabinet that examines, registers, certifies, or approves individuals or accredits educational programs relating to the use of sources of radiation.

(18) "Nuclear medicine technology" means technology applied under the supervision of an authorized user in compliance with 902 KAR 105 which shall pertain to the:

(a) Utilization of radiopharmaceuticals or radioactive materials in the diagnosis and treatment of disease in humans;

(b) Preparation of radiopharmaceutical agents;

(c) The administration of a diagnostic or therapeutic radiopharmaceuticals to patients or human research subjects; and

(d) Calibration and use of radiation detecting equipment to obtain clinical information.

(19) "Operator" or "operator of sources of radiation" means an individual, other than a licensed practitioner of the healing arts, who shall be certified by the cabinet to:

(a) Technically manipulate or administer a source of radiation; and

(b) Accurately position the patient to receive the radiation or manipulating the patient within the imaging or active radiation field.

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

(21) "Program director" means an individual designated by a sponsoring institution to assure that the training program for operators of sources of radiation shall be properly conducted.

(22) "Provisional nuclear medicine technology certificate" means a certificate issued by the cabinet to an individual participating in the alternate nuclear medicine course of study approved by the cabinet.

(23) "Radiation safety officer" means an individual in the field of radiation protection or a licensed practitioner of the healing arts

who has the knowledge and responsibility to apply appropriate radiation safety practices.

(24) "Radiation therapy" means the therapeutic administration of ionizing radiation to destroy lesions while sparing normal surrounding tissue.

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

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

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

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

(29) "Scope of practice" means the standards established by professional organizations that delineate what the profession does and places limits upon or confines the breadth of functions persons within a profession may lawfully perform.

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

(31) "Sponsoring institution" means an institution approved by the cabinet to provide a post-secondary educational program in the radiological sciences.

(32) "Student" means an individual enrolled in an approved course of study for operators of sources of radiation.

(33) "Supervision of students" means supervised by a licensed practitioner of the healing arts or a certified radiation operator who directs the activity of students.

(a) "Direct supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a certified radiation operator.

(b) "Indirect supervision" means supervised by a licensed practitioner of the healing arts or certified radiation operator who is immediately available in the individual's place of employment or sponsoring institution.

(34) "Temporary certificate" means a written authorization issued by the cabinet permitting an individual who has completed an appropriate course of study to perform diagnostic or therapeutic radiation procedures while awaiting the results of his examination.

Section 2. Incorporation by Reference (1) Form "KY CEU-001, Continuing Education Approval Request Radiation Operator Certification Program," edition 3/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (As used in the cabinet's administrative regulations relating to the certification of operators of sources of radiation, the following terms shall have the meanings set forth below unless clearly indicated otherwise-

(1) "Certified" means the holding of a valid certificate as defined in these regulations.

(2) "Contrast study" means a study performed whereby contrast media is introduced into the human body to define a part(s) which is not normally visualized on a radiograph.

(3) "Cabinet" means the Cabinet for Human Resources.

(4) "Emergency condition" means a condition that exists whereby an employer has unsuccessfully made a bona fide attempt to employ a certified radiation operator and the cabinet is requested to issue a provisional certificate so as not to impair necessary radiation health services to the particular facility.

(5) "General certificate" means a written authorization issued by the cabinet authorizing an individual to perform diagnostic radiographic procedures.

(6) "Individual" means a human being.

(7) "Licensed practitioner" or "licensed practitioner of the healing arts" means an individual licensed to practice medicine, osteopathy, dentistry, chiropractic, podiatry or veterinary medicine in this state.

(8) "Limited certificate" means a written authorization issued by

the cabinet authorizing an individual to perform radiographic procedures, other than those involving contrast media, in his specific field of practice or operation.

(9) "National organization" means a professional association, approved by the cabinet, that examines, registers, certifies or approves individuals or education programs relating to operators of sources of radiation.

(10) "Operator" or "operator of sources of radiation" means an individual, other than a licensed practitioner of the healing arts, who uses or operates a source(s) of radiation.

(11) "Provisional certificate" means a written authorization issued by the cabinet temporarily allowing an individual to perform radiographic procedures, under the direct supervision of a licensed practitioner of the healing arts, if a certified operator is not available.

(12) "Qualified person" means an individual who, through education and training, is qualified to teach radiation operators in one or more aspects of radiologic technology.

(13) "Radiation safety officer" means an individual in the field of radiation protection or a licensed practitioner of the healing arts who has the knowledge and responsibility to apply appropriate radiation practices.

(14) "Radiography" means the use of radiation producing equipment on human beings for diagnostic radiographic purposes under the supervision of a licensed practitioner of the healing arts or a certified operator.

(15) "Sources of radiation" means devices or equipment emitting or capable of producing ionizing radiation, if associated high voltage is applied, for the purpose of performing human diagnostic radiographic examinations.

(16) "Sponsoring institution" means a hospital, educational or other facility or a division thereof offering or intending to offer a course of study for operators of sources of radiation.

(17) "Student" means an individual enrolled in a course of study for operators of sources of radiation.

(18) Supervision.

(a) "Direct personal supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a certified operator.

(b) "Direct supervision" means supervised by a licensed practitioner of the healing arts or certified operator who is always available in the individual's place of employment or sponsoring institution.

(c) "General supervision" means supervised by a licensed practitioner of the healing arts or a certified operator who is available but not necessarily within the individual's place of employment or sponsoring institution.

(19) "Program director" means an individual designated by a sponsoring institution to assure that the training program for operators of sources of radiation is properly carried out.

(20) "Temporary certificate" means a written authorization issued by the cabinet authorizing an individual, who has completed an appropriate course of study, to perform radiographic procedures while awaiting examination.]

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: June 14, 2007

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

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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. 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 31, 2007. Send written notification of intent to attend the public hearing or written comments 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: Dewey F. Crawford 564-3700, ext. 3695

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines essential terms used in the regulations in this chapter regarding the medical imaging profession and those individuals, other than practitioners in the healing arts, who operate sources of radiation.

(b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is authorized by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts. The purpose of this administrative regulation is to define terms that are used in the administrative regulations promulgated by the cabinet covering operators of sources of radiation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for the promulgation of an administrative regulation relating operators of sources is KRS 194A.050, 211.090, 211.870, 211.890 and 211.993 stating that the Cabinet for Health and Family Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts. This administrative regulation provides the definitions for 902 KAR Chapter 105 regulations that are covered under this authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation updates the definitions used in the administrative regulations covering persons, other than practitioners in the healing arts, who operate sources of radiation. This amendment will improve the effectiveness of the regulations in this chapter by modernizing the terminology and ensuring consistency with national standards of practice and federal regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises 902 KAR 105.010 by amending terms used in other regulations in this chapter and establishing new definitions, including those for the regulation of nuclear medicine technologists and radiation therapy technologists.

(b) The necessity of the amendment to this administrative regulation: This series of regulations has not been revised in over ten years. There have been many changes in the radiation producing technology industry during that time, and this regulation modernizes the definitions used throughout the chapter.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates definitions in order to be consistent with current professional standards and national regulations.

(d) How the amendment will assist in the effective administration of the statutes: By updating this regulation, the cabinet will establish definitions consistent with current practice, thereby making enforcement more effective. This amendment will also assist in the administration of the statutes by ensuring that regulated entities are knowledgeable about the definitions used in the regulations with which they must comply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 260 state healthcare organizations with approximately 400 individuals currently performing Nuclear Medicine procedures or radiation therapy treatments in Kentucky are 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: Regulated entities must be familiar with new definitions in order to comply with all regulations in the chapter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because this regulation only defines terms used in the regulations for this chapter, there is no cost to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will have information necessary to be in compliance with regulations governing the radiation producing industry. Additionally, they will have the benefit of working in an industry regulated to ensure highest degrees of safety to them and to the patients they serve.

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

(a) Initially: Because this administrative regulation only defines terms used in other regulations for this chapter, no additional cost will be incurred initially as a result of amending this administrative regulation.

(b) On a continuing basis: Because this administrative regulation only defines terms used in other regulations for this chapter, no additional costs will be incurred on a continuing basis to implement this regulation. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? There are no costs associated with the implementation and enforcement of this regulation. Therefore, no funding is necessary.

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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? Unit, parts, or divisions of state and local government where radiation producing equipment is used in the healing arts, such as county or city owned hospitals or clinics will be affected.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.870, 211.890 and 211.993

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 administrative regulation will not generate any additional revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? This specific regulation, which addresses definitions for the medical imaging profession series, will not result in additional costs for the first year.

(d) How much will it cost to administer this program for subsequent years? This specific regulation, which addresses definitions

for the medical imaging profession series, will not result in additional costs in subsequent years.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 105:030. Education and training [Teaching-institution's curricula].

RELATES TO: KRS 211.870, 211.890, 211.993

STATUTORY AUTHORITY: KRS 194A.050[194.060], 211.090

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services [Human Resources] is authorized by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform curricula standards for institutions teaching persons to operate sources of radiation.

Section 1. Applicability. (1) This administrative regulation shall apply to education and training standards for institutions offering a postsecondary course of study for operators of sources of radiation.

(2) The sponsoring institution has primary responsibility for the program of study offered to achieve stated educational (didactic and clinical) objectives that meet the standards established by the profession and accrediting agencies which grant the terminal award.

(3) A sponsoring institution shall be accredited by a recognized agency or meet equivalent standards.

(4) Educational programs shall be established in:

(a) Community and junior colleges;

(b) Senior colleges and universities;

(c) Hospitals;

(d) Medical schools;

(e) Postsecondary vocational/technical schools and institutions;

(f) Military/governmental facilities;

(g) Proprietary schools; and

(h) Consortia.

(5) Consortia must be structured to recognize and perform the responsibilities and functions of a sponsoring institution.

Section 2. Curricula Standards. Sponsoring institutions offering a course of study for operators of sources of radiation shall:

(1) Make application to the Joint Review Committee on Education in Radiologic Technology;

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

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

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

(5) Have as the program director, for a course of study leading to:

(a) General certification, a general certified operator who shall

meet the requirement of the professional educational guidelines and standards in the appropriate field of practice.

(b) Limited certification, a general certified operator who shall have a minimum of three (3) years of clinical or teaching experience or a combination of clinical and teaching experience in the appropriate field of practice.

(6) Provide a certified operator to student ratio consistent with professional educational guidelines in the appropriate field of practice;

(7) Provide appropriate facilities, sufficient volume, and a variety of diagnostic or therapeutic procedures to properly conduct the course of study;

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

(9) Provide supervision by a licensed practitioner of the healing arts or a certified radiation operator in the appropriate field of practice;

(10) Prohibit students from being placed in a situation where they would be required to apply radiation or radiopharmaceuticals to a human being while not under supervision consistent with professional educational guidelines in the appropriate field of practice.

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

(12) Designate a radiation safety officer;

(13) Maintain accreditation by an approved programmatic accrediting body for educational programs leading to general certification and permit site inspections by the cabinet's representative, and

(14) Permit site inspections by the cabinet's representative for educational programs leading to limited certification.

**Section 3. Student Employment Outside the Academic Clinical Setting** (1) Educational programs shall develop a policy for employment of students to perform diagnostic radiologic procedures outside the academic setting.

(2) Educational programs that elect to permit student employment shall develop criteria and guidelines for students employed to perform diagnostic radiologic procedures outside the academic setting.

(3) At a minimum, students must have completed fifty (50) percent of their course of study and have had their didactic and clinical performance evaluated and recorded as satisfactory by the program director.

(4) Students shall be under the indirect supervision of a licensed practitioner of the healing arts or a certified radiation operator.

(5) The program director shall submit documentation to the employer and to the cabinet.

**Section 4. An Institution's Curriculum and Requirements** (1) Radiography course of study. The approved institution shall offer a recognized and accepted curriculum of a minimum of two (2) academic years of full-time study or its equivalent that includes, but is not limited to, the following:

(a) Human structure and function;

(b) Principles of radiation protection;

(c) Radiation biology;

(d) Pathology;

(e) Medical terminology;

(f) Medical ethics and law;

(g) Equipment operation and maintenance;

(h) Image production and evaluation;

(i) Radiographic procedures;

(j) Computers in radiologic sciences;

(k) Radiologic physics;

(l) Pharmacology and drug administration;

(m) Patient positioning;

(n) Patient assessment, management, and education; and

(o) Clinical education.

(2) Nuclear medicine course of study. The approved institution shall offer a recognized and accepted curriculum of a minimum of twelve (12) months of full-time study for graduates of an accredited

radiography program or a minimum of two (2) academic years of full-time study or its equivalent for other individuals that includes, but is not limited to, the following:

(a) Human structure and function;

(b) Radionuclide chemistry;

(c) Radiopharmacology;

(d) Nuclear instrumentation;

(e) Diagnostic and therapeutic procedures;

(f) Radiation biology;

(g) Nuclear medicine in vivo and in vitro procedures;

(h) Nuclear medicine physics;

(i) Applied math and statistics;

(j) Radiation safety and protection;

(k) Patient positioning;

(l) Patient assessment, management, and education;

(m) Computer applications for nuclear medicine;

(n) Records and administrative procedures;

(o) Medical ethics and law; and

(p) Clinical correlation of nuclear medicine procedures.

(3) The alternate course of study in nuclear medicine. The approved course of study in nuclear medicine shall consist of:

(a) Completion of a minimum of fifteen (15) hours of course work

approved by the cabinet in each of the following areas:

1. Radiopharmacy;

2. Nuclear medicine instrumentation; and

3. Radiation safety.

(b) A minimum of four (4) years or 8,000 hours of clinical experience in nuclear medicine technology under the supervision of an authorized user as named on a radioactive materials license issued by the cabinet, another agreement state, or the U.S. Nuclear Regulatory Commission.

1. The employer shall be responsible for providing or arranging for the required clinical experience and providing appropriate supervision of the student by an authorized user.

2. Clinical experience shall be documented annually by the authorized user with the renewal of the provisional nuclear medicine technology certificate.

(c) A minimum of six (6) years shall be permitted to complete the alternate course of study as specified in 902 KAR 105.020, Section 4.

(4) Radiation therapy course of study. The approved institution shall offer a recognized and accepted curriculum of a minimum of twelve (12) months of full-time study for graduates of an accredited radiography program or a minimum of two (2) academic years of full-time study or its equivalent for other individuals that includes, but is not limited to, the following:

(a) Human structure and function;

(b) Oncologic pathology;

(c) Radiation protection and quality assurance;

(d) Equipment operation;

(e) Clinical and technical oncology;

(f) Medical terminology;

(g) Radiation biology;

(h) Mathematics;

(i) Radiation therapy physics;

(j) Radiation protection;

(k) Patient assessment, management, and education;

(l) Medical imaging and processing;

(m) Clinical dosimetry;

(n) Medical ethics and law; and

(o) Clinical education.

(5) Radiologist assistant course of study.

(a) The educational program for the radiologist assistant shall culminate in the award of a baccalaureate degree, master's degree, or postbaccalaureate certificate from an institution recognized by the American Registry of Radiologic Technologists that incorporates a radiologist-directed clinical preceptorship and meets the eligibility requirements for certification by the American Registry of Radiologic Technologists.

(b) The approved institution shall offer a recognized and accepted curriculum that includes, but is not limited to, the following:

1. Patient assessment, education, and management;

2. Medical terminology;

3. Anesthetics;
4. General medications;
5. Contrast media;
6. Anatomy, physiology, and pathophysiology;
7. Radiologic procedures;
8. Radiation safety;
9. Radiation biology;
10. Fluoroscopic operation;
11. Medical-legal, professional, and governmental standards;

and

12. A radiologist-directed clinical preceptorship.

(6) Limited x-ray machine operator course of study. The approved institution shall offer a minimum of 240 hours of classroom work and a minimum of 360 hours devoted to clinical experience:

- (a) Human structure and function;
- (b) Medical terminology;
- (c) Radiation protection;
- (d) Radiation biology;
- (e) Medical ethics and law;
- (f) Equipment operation and maintenance;
- (g) Image production and evaluation;
- (h) Radiographic processing technique;
- (i) Radiographic procedures;
- (j) Patient positioning; and
- (k) Patient care.

(7) The approved independent limited x-ray machine operator course of study.

The following curriculum, including clinical experience, shall be completed within twelve (12) months:

- (a) Human structure and function;
- (b) Medical terminology;
- (c) Radiation protection;
- (d) Radiation biology;
- (e) Medical ethics and law;
- (f) Equipment operation and maintenance;
- (g) Image production and evaluation;
- (h) Radiographic processing technique;
- (i) Radiographic procedures;
- (j) Patient positioning; and
- (k) Patient care.

(This administrative regulation shall apply to curricula standards for institutions offering an institutional course of study for operators of sources of radiation.)

**Section 2—Curricula Standards—Sponsoring institutions offering an institutional course of study for operators of sources of radiation shall:**

- (1) Make application on a form provided or approved by the cabinet;
- (2) Supply data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum instructions. Provide a structured curriculum with clearly written course descriptions, lesson plans and objectives.
- (3) Have as the medical director or advisor of a course of study:
  - (a) For obtaining general certification, a qualified radiologist certified by the American Board of Radiology or an individual possessing suitable equivalent qualifications.
  - (b) For obtaining limited certification, an individual as stipulated in paragraph (a) of this subsection, or a licensed practitioner of the healing arts in the appropriate field of practice, knowledgeable in radiation protection.
- (4) Provide an adequate faculty which shall be qualified through academic preparation or experience to teach the subjects assigned;
- (5) Have as the program director of a course of study:
  - (a) For obtaining general certification, a general certified operator who shall have a minimum of four (4) years of education or teaching experience or a combination of education and teaching experience in the appropriate field of practice.
  - (b) For obtaining limited certification, a general certified operator who shall have a minimum of three (3) years of education or teaching experience or a combination of education and teaching experience in the appropriate field of practice.

(6) Provide a ratio of not more than three (3) students to one (1) full-time certified operator engaged in clinical instruction;

(7) Provide a course of study in radiography at facilities approved by the cabinet;

(8) Provide appropriate facilities, sufficient volume, and a variety of diagnostic radiographic examinations to properly conduct the course of study;

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

(10) Provide direct personal supervision by a licensed practitioner of the healing arts or a certified operator to students upon their initial application of radiation to human beings;

(11) Prohibit students from being placed in a situation where they would be required to apply radiation to a human being while not under the direct supervision of a licensed practitioner of the healing arts or a certified operator.

(12) Students performing the functions of a certified radiation operator outside the academic setting, shall have completed at least fifty (50) percent of their course of study and have had their didactic and clinical performance evaluated and recorded as satisfactory by the program director. Students shall be under the direct supervision of a licensed practitioner of the healing arts or a certified radiation operator. It shall be the responsibility of the teaching institution to insure that the conditions under which students are performing the functions of a radiation operator are compatible with the educational institution's clinical affiliation standards.

(13) Prohibit exposures to human beings from a course of radiation except for diagnostic purposes unless otherwise specified in the curriculum approved by the cabinet;

(14) Keep records of each student's attendance, grades, clinical experience and subjects completed;

(15) Designate a radiation safety officer; and

(16) Permit site inspections by representatives of the cabinet. The cabinet may accept, in lieu of a departmental site inspection, a site visit report from a recognized accrediting body.

**Section 3—Advanced Placement.** Upon departmental approval, advanced placement may be made by examination in accordance with institutional policy based upon the same standards of achievement required for students completing the required clock hours of classroom and clinical experience. Examinations used in advance placement shall be reliable, validated and based on performance data of students who have completed the required subjects.]

WILLIAM D. HACKER, M D , FAAP, CPE, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: June 14, 2007

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

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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 31, 2007. Send written notification of intent to attend the public hearing or written comments 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: Dewey F. Crawford 564-3700, ext. 3695

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes essential requirements for teaching institutions' curricula and the practice of persons who operate sources of radiation in the healing arts.

(b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is authorized by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including curricula standards for institutions teaching persons to operate sources of radiation. This administrative regulation is necessary to update the curricula standards in order to maintain uniformity with the national requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing updated curricula provisions consistent with the cabinet's statutory authority to regulate operators of sources of radiation other than licensed practitioners of the healing arts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation amendment will assist in the effective administration of the statutes by bringing training course curricula into compliance with national guidelines and industry standards. By updating these curricula, the cabinet can ensure that individuals who are responsible for radiation producing machines and sources of radiation have been properly trained and can provide safe and accurate services to patients.

(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 teaching regulation has been amended to update training requirements for medical radiographers and nuclear medicine and radiation therapy technologists, including limited x-ray machine operators.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring Kentucky's curricula into compliance with industry and national standards for education.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 194A.050, 211.090, 211.870, 211.890 and 211.993 stating that the Cabinet for Health and Family Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts.

(d) How the amendment will assist in the effective administration of the statutes: This regulation amendment will assist in the effective administration of the statutes by bringing training course curricula into compliance with national guidelines and industry standards. By updating these curricula, the cabinet can ensure that institutions providing education and training for individuals who are responsible for radiation producing machines and sources of radiation have been properly trained. As a result, this will ensure the safety of the patient and the radiation operator.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 20 institutions in Kentucky that provide radiation technologist training. On an annual basis, approximately 200 students entering these programs will be educated in accordance with the updated training standards.

(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. All institutions providing education and training in the area of radiation technology will be held to a uniform curriculum that is outlined by the Joint Review Committee for Education in Radiologic Technology (JRCERT). The improved curriculum adheres to national, professional standards leading to a higher level of training and more informed graduates. The entities in ques-

tion are currently implementing the curricula provisions outlined in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This curricula is currently used by the entities in question so there will be no cost to implement this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Educational institutions that follow the JRCERT accreditation and curriculum will be in compliance with the cabinet's objectives for training in the area of radiologic technology. There will be no need to submit any additional applications, or self studies that are not required by the JRCERT program. The improved curriculum adheres to national professional standards leading to a higher level of training and better trained graduates.

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

(a) Initially: No additional cost will be incurred as a result of amending this administrative regulation

(b) On a continuing basis: No additional cost will be incurred as a result of amending 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 will be used for the funding 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: This administrative regulation will not require an increase in fees in order to implement it.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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? Approximately 20 institutions in Kentucky that provide radiation technologist training 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. KRS 190A.050, 211.090, 211.870, 211.890, and 211.993.

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 administrative regulation will not generate any additional revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be required in the first year as this program is currently operational.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be required in subsequent years as this program is currently operational.

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



regulation.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Human Support Services**  
**Division of Child Abuse and Domestic Violence Services**  
**(Amendment)**

**920 KAR 2:040. Standards for children's advocacy centers.**

RELATES TO: KRS Chapter 13B, 17.165, Chapter 45A, 314.011(14), 314.142, 431.600, 620.020, 620.045, 620.050

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for [of] the Cabinet for Health and Family Services [cabinet] to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. To be eligible for grants from state government entities, KRS 620.045(2) requires children's advocacy centers to comply with the [their] statutory definition established in KRS 620.020(4) and administrative regulations promulgated by the cabinet. This administrative regulation establishes staff qualifications and program standards for children's advocacy centers.

Section 1. Definitions. (1) "Governing board" or "board" means the board of directors vested with the legal responsibility for management of the children's advocacy center.

(2) "Mental health discipline" means:

- (a) Art therapy in accordance with KRS 309.130 to 309.139;
- (b) Marriage and family therapy in accordance with KRS 335.300 to 335.399;
- (c) Professional counseling in accordance with KRS 335.500 to 335.599;
- (d) Psychiatric nursing in accordance with KRS 202A.011(12)(d);
- (e) Psychiatry in accordance with KRS 202A.011(12)(b);
- (f) Psychology in accordance with KRS Chapter 319; and
- (g) Social work in accordance with KRS 335.010 to 335.170.

(3) "Referral agreement" means a written protocol or process between the children's advocacy center and the provider for services that the center does not have the capacity to provide to a child victim or nonoffending caretaker, and which is completed prior to the delivery of services and kept on file at the center.

(4) "Regional children's advocacy center" or "center" means an agency defined by KRS 620.020(4) and designated by the cabinet to serve as the regional children's advocacy center, in accordance with KRS 620.045(1).

Section 2. Governing Board of Directors. (1) A center shall be managed by a governing board in order to allow community involvement in the planning, development, and evaluation of services.

(2) A governing board shall adopt written bylaws. The bylaws shall include the:

- (a) Purpose of the agency;
  - (b) Minimum and maximum number of board member positions;
  - (c) Qualifications for board members;
  - (d) Method of selecting board members;
  - (e) Terms of board members;
  - (f) Officers and duties;
  - (g) Method of election of officers and chairpersons;
  - (h) Quorum requirements for meetings of the board; and
  - (i) Method for removal of directors.
- (3) The duties of the board shall be to:
- (a) Schedule meetings of the board to be held at least six (6) times per state fiscal year;
  - (b) Maintain minutes of each meeting of the board containing:

- 1. The date and place of the meeting;
- 2. Names of board members present;
- 3. The subject matter discussed and actions taken; and
- 4. The name of the reporter;

(c) Establish standing committees of the board to include executive, nominating, finance, and personnel committees;

(d) Establish restrictions on reimbursement of board members including the prohibition against a member contracting with the board to perform personal or professional services; and

(e) Ensure that the facility housing the center is properly clean, maintained, private, and child-friendly.

(f) Recruit and maintain board members who represent the counties contained in the Area Development District where the center is located.

Section 3. Personnel Management. (1) A personnel file shall be maintained by the center for each employee.

(2) The minimum contents of the personnel file shall include:

(a) Current professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;

(b) Conditions or terms of employment that shall include a confidentiality statement signed by the employee;

(c) A personnel action document reflecting a change in status of an employee, such as salary change, promotion, resignation, or termination;

(d) A position description document including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position; and

(e) Results from a criminal records background check conducted in accordance with KRS 17.165 on the employee during the application process.

(3) Personnel policies shall be established by the center and shall include:

- (a) Attendance and leave policies;
- (b) Compensation plan;
- (c) Hiring, disciplinary, and firing practices;
- (d) Staff development and continuing education provisions;
- (e) Employee grievance procedures;
- (f) Employee performance evaluations; and
- (g) Equal opportunity employment statements.

(4) The governing board shall employ one (1) staff person as executive director of the children's advocacy center. The executive director shall:

- (a) Be responsible for financial management of the center, including budgets and grant writing;
- (b) Supervise the duties and activities of center staff and volunteers;

(c) Coordinate the design and delivery of services;

(d) Fulfill duties as required by the governing board;

(e) Report directly to the board on all center activities;

(f) 1. Have a master's degree from an accredited college or university and two (2) [three (3)] years of experience in a:

a. Human services;

b. Management; or

c. Criminal justice field; or

2. Bachelor's degree from an accredited college or university and three (3) years of experience in a:

a. Human Services;

b. Management; or

c. Criminal justice field, and

(g) Affirm a commitment to the welfare and protection of children.

(5) A governing board may establish the staff positions specified in this subsection.

(a) Child advocate. A child advocate shall have a bachelor degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

(b) Therapist. A therapist shall:

1. Have a doctorate or master's degree from an accredited college or university in a mental health discipline and two (2) years postdegree counseling or clinical experience; and

2. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.

(c) Forensic interviewer. A forensic interviewer, if employed by the center, shall meet the qualifications of the therapist position specified in paragraph (b) of this subsection and shall have three (3) years of experience interviewing children.

(d) Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

(e) Other staff necessary to support the administration or service delivery of the agency.

(f) The qualifications established in paragraphs (a) through (d) of this subsection shall not apply to center staff hired prior to the effective date of this administrative regulation.

(g) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(h) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (g) of this subsection before providing services to a child.

(i) A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications outlined in this section. An agreement for provision of service shall be on file at the center, and shall specify the qualifications of the staff.

(j) An employee of a children's advocacy center shall be at least eighteen (18) years of age.

(k) An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165.

(l) An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the employee is cleared of the charge.

(m) An employee or designated agent shall have immunity from civil liability and shall be provided a defense in civil actions pursuant to KRS 620.050(2).

**Section 4. Services.** (1) A center shall provide the services specified in subsections (2) through (5) of this section or develop a referral agreement [mechanism] to refer clients to a provider of these services.

(2) Advocacy services assist child victims and their nonoffending caregivers and may include:

(a) Accompaniment to court or court-related meetings;

(b) Case management services; and

(c) Information and referral services.

(3) Counseling services may include

(a) A crisis telephone line;

(b) Crisis counseling services; and

(c) Support group services.

(4)(a) Clinical services may include:

1. Mental health screening;

2. Mental health evaluation;

3. Individual therapy services for a child and nonoffending caretaker and family; and

4. Group therapy services for a child and nonoffending caretaker;

(b) Clinical services shall be provided by a professional who meets the requirements of Section 3(5)(b) of this administrative regulation.

(5) Forensic interviewing includes structured interviews with a child for the purpose of facilitating a criminal investigation and may be provided on site at the center by:

(a) The center staff forensic interviewer in accordance with Section 3(5)(c) of this administrative regulation; or

(b) A law enforcement officer and a family service worker who is employed by the cabinet.

(6) A child's recorded interview shall not be duplicated except in accordance with KRS 620.050(10).

(7) Multidisciplinary team facilitation may include:

(a) Scheduling of meetings;

(b) Case tracking;

(c) Case review; and

(d) Data collection.

(8) Except as provided by subsection (9) of this section, medical examination services shall be provided in accordance with 907 KAR 3:160 by a licensed physician with pediatric experience and expertise in the evaluation and treatment of child abuse.

(9) Medical examination services may be provided by a sexual assault nurse examiner certified in accordance with KRS 314.011(14) and 314.142 if the child is fourteen (14) years of age or older.

(10) Consultation and education services may include:

(a) School-based prevention programs;

(b) Community education programs;

(c) Media presentations;

(d) In-service training; and

(e) Case consultation services.

(11) In addition to providing services to children in the county in which the center is located, regional center staff shall [may] serve:

(a) Children in other counties in the area development district, including those who need medical examinations or forensic interviewing services [as available]; and

(b) As a technical assistant and consultation resource to criminal justice and human service professionals in the area development district in which the center is located.

(12) Services provided by a center shall be coordinated with multidisciplinary teams as defined in KRS 431.600 and 620.020.

**Section 5. Client Files.** (1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.

(2) A client file shall include information sufficient to document the services provided by the agency.

(3) A center shall:

(a) Develop and maintain written confidentiality policies and procedures to ensure client privacy as provided in Kentucky Rules of Evidence 506 and 507; and

(b) Limit disclosure of confidential information pursuant to KRS 620.050(5) and (6).

**Section 6 Funding.** (1)(a) The cabinet shall designate one (1) regional children's advocacy center in each area development district.

(b) Any designation as a regional children's advocacy center shall terminate on June 30, 2007, and any subsequent designation shall terminate at the end of each state fiscal year. Any designation as a regional children's advocacy center may be renewed at the discretion of the cabinet.

(2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernment grants or fundraising to support efforts consistent with the mission of the center.

(3) In addition to the provisions of subsection 1(b) of this Section, the Commissioner of the Department for Human Support Services [The secretary of the cabinet] may rescind the designation of a center if a determination is made that the center failed to:

(a) Submit a budget and plan for services which shall substantiate [evidences] the capacity to provide services specified in KRS 620.020(4) and in accordance with this administrative regulation,

(b) Operate in accordance with a budget and plan for services approved by the cabinet, or

(c) Operate in accordance with the requirements established in a master agreement finalized between the children's advocacy center and the cabinet and of this administrative regulation.

(4) Cabinet funding for a center shall be contracted through the regional center.

(5) A center may contract or establish referral agreements with other agencies or professionals to provide services as defined within Section 4 of this administrative regulation.

(6) Except in cases where designation has terminated, as set forth in subsection 1(b) of this Section, a center that has received notice its designation has been rescinded may request an administrative hearing in accordance with KRS Chapter 13B. A written request for an administrative hearing shall be received by the Commissioner for Human Support Services within thirty (30) calendar days of the date of receipt of the department's notice that the designation has been rescinded. This request shall be sent to the Office of the Commissioner, Department for Human Support Ser-

vices, Cabinet for Health and Family Services, 275 East Main Street, 3rd floor Frankfort Kentucky 40621 [A-dispute shall be processed in accordance with KRS Chapter 45A].

Section 7. Audit and Monitoring. (1)(a) The cabinet or its agent shall randomly, or upon receipt of a complaint, audit, monitor, or conduct program reviews of a center.

(b) If the cabinet determines that an investigation would endanger a client or abuse victim, it shall identify an alternative method of review.

(2) A center shall allow the cabinet or its agent access to its property and records as required by subsection (1) of this section.

Section 8. Grievance and Appeals Process. (1) Client grievances. A center shall establish a written grievance procedure that shall:

(a) Be given to the parent or guardian of each child who comes to the center for services; and

(b) Contain a description of the services provided by the center and the procedure for filing a client grievance.

(2) A center shall inform the parent or guardian in writing of the child's appeal process described in 922 KAR 1:320.

MARLA J. MONTELL, Commissioner  
MICHAEL A. FIELDS, Undersecretary  
MARK BIRDWHISTELL, Secretary

APPROVED BY AGENCY: May 31, 2007

FILED WITH LRC: June 4, 2007 at 4 p.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: Ann Gordon

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the standards for Children's Advocacy Centers which provide medical and counseling services to child victims of sexual abuse.

(b) The necessity of this administrative regulation: This administrative regulation is needed to allow the Cabinet for Health and Family Services to administer the state general fund contract for the centers and provide program oversight.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 620.045 which allows the Secretary of the Cabinet for Health and Family Services to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional children's advocacy centers. In order to be eligible for grants from any state government entity, a children's advocacy center shall meet the statutory definition of a children's advocacy center as provided by KRS 620.020 and shall operate consistent with administrative regulations promulgated by the Cabinet for Health and Family Services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards of care and operation for the 15 regional advocacy centers and will ensure the legislative intent that all children who are victims of sexual abuse will receive services.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amends the current standards of regional children's advocacy centers to require the center to serve the entire area development district in which it is designated, defines the term "referral agreement," adds the requirement that the Board of Directors represent the ADD where the center is located, amends the minimum requirements for the executive director, allows the Commissioner of the Department for Human Support Services to designate regional centers, permits a center that received notice it has lost its designation to request an administrative hearing in accordance with KRS Chapter 13B, adds additional justifications for removing a center's designation, and provides an exception to the requirement that the cabinet shall investigate all complaints.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment is necessary to ensure the delivery of service to all child victims of sexual abuse. Currently the regulation only requires services be provided to the 15 counties in which the centers are located

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 620.045 which allows the Secretary of the Cabinet for Health and Family Services to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional children's advocacy centers. In order to be eligible for grants from any state government entity, a children's advocacy center shall meet the statutory definition of a children's advocacy center as provided by KRS 620.020 and shall operate consistent with administrative regulations promulgated by the Cabinet for Health and Family Services

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that the legislative intent of the statute, to provide services for all children in the Commonwealth, is satisfied.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation provides for 15 regional centers that provide a deliver service and are the only child advocacy centers in the commonwealth. This regulation will affect those 15 centers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not affect the majority of the centers as they currently are providing region wide services. The centers that do not serve the entire region will have to develop a system for ensuring all children in their region have access to the center and its services. The General Assembly provided expansion money in the 2006 budget for the centers to provide region wide coverage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The 15 Centers are funded in the amount of \$142,000 per year through general fund dollars. The entire network was provided one million in expansion money in 2006 to be divided equally between the centers. This funding should provide each center with the ability to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the regulation and amendment the centers will provide more and comprehensive services throughout the area development district.

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

(a) Initially: No additional expense.

(b) On a continuing basis: No additional expense

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds are used to support the children's advocacy centers program.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the application of policy is applied equally to all children's advocacy centers.

#### 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 Department for Human Support Services 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 620.045, KRS 620.020, KRS 620.050

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.

(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 will not generate any additional revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? This program has been operated since 1999. This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This program has been operational since 1999. This amendment will not require any additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Expenditures

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 2007

KENTUCKY INFRASTRUCTURE AUTHORITY  
(Repealer)

200 KAR 17:011. Repeal of 200 KAR 17:010 and 200 KAR 17:060.

RELATES TO: KRS 224A.011, 224A.040, 224A.112, 224A.113, 224A.270

STATUTORY AUTHORITY: KRS 224A.070(1), 224A.113  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.070(1) authorizes the authority to promulgate administrative regulations for loans and grants. Also KRS 224A.113 authorizes the authority to promulgate regulations to implement KRS 224A.111, 224A.115, and 224A.112. This administrative regulation acts specifically to repeal 200 KAR 17:010, and 200 KAR 17:060. The provisions in 200 KAR 17:010 are no longer applicable to the program as a result of changes in the program's objectives. KRS 224A.270 was repealed, therefore the provisions in 200 KAR 17:060 are no longer necessary.

Section 1. The following administrative regulations are hereby repealed:

- (1) 200 KAR 17:010, Guidelines for Infrastructure Revolving Fund; and
- (2) 200 KAR 17:060, Guidelines for Solid Waste Revolving Fund.

JODY HUGHES, Executive Director

APPROVED BY AGENCY: July 14, 2007

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2007, at 10 30 a.m., at Kentucky Infrastructure Authority, 1024 Capital Center Dr., Suite 340, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 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: John E. Covington, III, Financial Analyst, Kentucky Infrastructure Authority, 1024 Capital Center Dr., Suite 340, Frankfort, Kentucky 40601-3646, phone (502) 573-0260, fax (502) 573-0157.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John E. Covington, III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation acts specifically to repeal regulations regarding the guidelines for Infrastructure Revolving Fund, 200 KAR 17:010, and the guidelines for Solid Waste Revolving Fund, 200 KAR 17:060.

(b) The necessity of this administrative regulation: The Infrastructure Revolving Fund, 200 KAR 17:010, is obsolete and no longer applicable to the operation of the program. Legislation regarding the Solid Waste Revolving Fund administrative regulations, 200 KAR 17:060 has been repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This repeals unnecessary and obsolete administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation's only purpose is to repeal regulations regarding the guidelines for Infrastructure Revolving Fund, 200 KAR 17:010, and the guidelines for Solid Waste Revolving Fund, 200 KAR 17:060.

(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: This administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Governmental Agencies as defined in KRS 224A.011(14) and investor owned water systems as provided for in KRS 224A.2112(2).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities applying for assistance will be relieved of complying with regulations that are either outdated or no longer applicable.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for assistance will be governed by statute and board policy that will be more responsive to the applicant's needs.

(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.

(b) On a continuing basis: There will be no additional cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Does not establish fees or increase fees directly or indirectly

(9) TIERING: Is tiering applied? Tiering will not apply. Since this is a repealer regulation everyone will be 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? Governmental Agencies as defined in KRS 224A.011(14) and investor owned water systems as provided for in KRS 224A.2112(2).

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, 224A.070(1), 224A.113, 224A.270

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 impact or effect on expenditures and revenues of a state or local government agency.

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

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

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

year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(New Administrative Regulation)**

**902 KAR 105:081. Limited X-Ray machine operator.**

RELATES TO: KRS 211.870, 211.890, 211.993

STATUTORY AUTHORITY: KRS 194A.050, 211.090(b)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is authorized by KRS 211.870, 211.890 and 211.993 to regulate an operator of a source of radiation other than a licensed practitioner of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform requirements for the certification of limited certificate holders.

Section 1. Applicability. (1) This administrative regulation shall apply to individuals who perform limited human diagnostic radiography while under the supervision of a medical, osteopathic, or chiropractic licensed practitioner, or a certified radiation operator, and who successfully complete the requirements for the limited x-ray machine operator certification.

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

(3) Limited human diagnostic radiography shall exclude those involving contrast media, fluoroscopic equipment, mammography, computed tomography, bedside radiography, nuclear medicine, or radiation therapy procedures.

Section 2. Eligibility for a Limited X-ray Machine Operator Certificate. (1) No person shall be eligible for a limited x-ray machine operator certificate for human diagnostic radiographic purposes unless the individual has:

(a) Completed a four (4) year course of study in a secondary school or passed a standard equivalency test; or

(b) Completed a course of study in limited x-ray machine operations approved by the cabinet from a postsecondary institution or an approved independent study course.

(2) The approved postsecondary course of study shall include a minimum of 240 hours of classroom work including the following subjects:

- (a) Human structure and function;
- (b) Medical terminology;
- (c) Radiation safety and protection;
- (d) Radiation biology;
- (e) Medical ethics and law;
- (f) Equipment operation and maintenance;
- (g) Image production and evaluation;
- (h) Radiographic processing technique;
- (i) Radiographic procedures;
- (j) Patient positioning; and
- (k) Patient care.

(3) The approved postsecondary course of study shall include a minimum of 360 hours to be devoted to clinical experience con-

sisting of demonstrations, discussions, and supervised practice.

(4) An approved independent study course shall include the following subjects:

- (a) Human structure and function;
- (b) Medical terminology;
- (c) Radiation safety and protection;
- (d) Radiation biology;
- (e) Medical ethics and law;
- (f) Equipment operation and maintenance;
- (g) Image production and evaluation;
- (h) Radiographic processing technique;
- (i) Radiographic procedures;
- (j) Patient positioning; and
- (k) Patient care.

(5) An approved independent study course shall include a minimum of fifty (50) radiographic procedures in each of the following areas:

- (a) Chest;
- (b) Extremities; and
- (c) Musculoskeletal.

(6) The clinical experience shall be obtained at the student's place of employment, an alternate facility, or a combination. The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified radiation operator. Clinical experience shall begin only after the student has successfully completed the first six (6) chapters in the provided textbook and has received an authorization letter issued by the cabinet. Course requirements shall be completed within one (1) year from date of enrollment.

Section 3. Eligibility for a Limited Podiatry X-ray Machine Operator Certificate. No person shall be eligible for a limited podiatry x-ray machine operator certificate for human diagnostic radiographic purposes unless the individual has:

(1) Completed a four (4) year course of study in a secondary school or passed a standard equivalency test; or

(2) Completed an independent course of study in limited podiatric radiography approved by the cabinet.

(a) The approved independent study course shall include the following subjects.

- (1) Human structure and function;
- (2) Medical terminology;
- (3) Radiation safety and protection;
- (4) Radiation biology;
- (5) Medical ethics and law;
- (6) Equipment operation and maintenance;
- (7) Image production and evaluation;
- (8) Radiographic processing technique;
- (9) Radiographic procedures;
- (10) Patient positioning; and
- (11) Patient care.

(b) An approved independent study course in limited podiatric radiography shall include a minimum of fifty (50) radiographic procedures of the feet and ankles.

(c) The clinical experience shall be obtained at the student's place of employment. The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified operator. Clinical experience shall begin only after the student has successfully completed the first six (6) chapters in the textbook and has received an authorization letter issued by the cabinet. Course requirements shall be completed within one (1) year from date of enrollment.

(3) Passed an examination conducted or approved by the cabinet.

Section 4. Eligibility for a Limited Bone Densitometry X-ray Machine Operator Certificate. No person shall be eligible for a limited bone densitometry x-ray machine operator certificate for human diagnostic radiographic purposes unless the individual has:

(1) Completed a four (4) year course of study in a secondary school or passed a standard equivalency test; and

(2) Completed an independent limited course of study in limited

bone densitometry approved by the cabinet.

(a) The approved independent study course shall include, but not be limited to, the following subjects:

1. Human structure and function;
2. Medical terminology;
3. Radiation safety and protection;
4. Radiation biology;
5. Medical ethics and law;
6. Equipment operation and maintenance;
7. Image production and evaluation;
8. Radiographic processing technique;
9. Radiographic procedures;
10. Patient positioning; and
11. Patient care.

(b) The approved independent study courses shall include a minimum of fifty (50) bone densitometry procedures.

(c) The clinical experience shall be obtained at the student's place of employment. The employer shall be responsible for providing or arranging for the required clinical experience and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified radiation operator. Clinical experience shall begin only after the student has successfully completed the first six (6) chapters in the textbook and has received an authorization letter issued by the cabinet. Course requirements shall be completed within one (1) year from date of enrollment. The bone densitometry student shall also receive manufacturer's training.

(d) Manufacturer's training will be conducted by a representative of the company who produces the x-ray machine used for bone densitometry.

(e) Training shall include the proper techniques for operation and safety.

(3) Passed an examination conducted or approved by the cabinet.

Section 5. Temporary Certificate. (1) The cabinet may, upon application and payment of the appropriate fees, issue a temporary certificate to an applicant who has completed an approved course of instruction in limited medical radiography, limited podiatric radiography, and limited bone densitometry, and who meets the requirements of this administrative regulation, but has not taken the required examination.

(2) Applications for certification shall be filed with the Cabinet for Health and Family Services on Form KR-300, Radiation Operator Certification Diagnostic X-Ray Application Form.

(3) Temporary certificates for all certifications shall expire on the last day of the month, one (1) year after the date of issuance and shall not be renewable.

Section 6. Approved Radiographic Procedures for the Limited X-ray Machine Operator. Limited x-ray machine operators are limited to performing the following procedures:

- (1) Limited x-ray machine operator certification:
  - (a) Radiography of the thorax, lungs and ribs;
  - (b) Radiography of the skull and facial structures;
  - (c) Radiography of the upper and lower extremities, including the pectoral girdle and the hips and pelvis; and
  - (d) Radiography of the cervical, thoracic, and lumbar spines.
- (2) Limited podiatry x-ray machine operator certification, including radiography of the foot and ankle.
- (3) Limited bone densitometry x-ray machine operator certification, including bone densitometry radiographic procedures.

Section 7. Incorporation by Reference. (1) Form "KY CEU-300, Radiation Operator Certification Diagnostic X-Ray Application Form", edition 7/97, is incorporated by reference.

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

WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner  
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: June 14, 2007

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 23, 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 July 16, 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 31, 2007. Send written notification of intent to attend the public hearing or written comments 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: Dewey F. Crawford 564-3700, ext. 3695

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform requirements for the certification of individuals operating sources of radiation in the healing arts holding a limited certificate. Specifically, this administrative regulation establishes practice standards related to limited x-ray machine operators.

(b) The necessity of this administrative regulation: The Cabinet for Health and Family Services is authorized by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including the classification and certification of operators, and to set other standards as may be appropriate for the protection of health and safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing standards and requirements necessary to regulate limited x-ray machine operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new regulation recognizes the need for standards for certification of x-ray operators functioning in a limited capacity. This need has arisen due to the development of the industry and will allow the cabinet to ensure the highest quality image and treatment resulting from controlled, intentional exposure of radiation. This administrative regulation also brings the cabinet regulations into compliance with national standards.

(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 designed to create standards for a new classification of a limited x-ray machine operator.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.050, 211.090, 211.870, 211.890 and 211.993 stating that the Cabinet for Health and Family Services shall regulate operators of sources of radiation other than licensed practitioners of the healing arts.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by establishing practice standards related to limited x-ray machine operators. By creating these requirements for certification, the cabinet can ensure that these individuals have been properly trained, which will ensure the safety of the patient and the radiation operator.



(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 260 health care organizations and about 400 individuals that will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities must adhere to the new requirements in order to be licensed to operate x-ray equipment in a limited capacity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with the provisions of the regulation as operators have received the training outlined in this regulation and are operating in a manner consistent with these requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from standards designed to ensure highest degrees of safety for them and the patients they serve. In addition, adherence to national standards will promote a higher level of training and better trained limited x-ray machine operators.

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

(a) Initially: No additional cost will be required on an initial basis to implement this regulation.

(b) On a continuing basis: No additional cost will be incurred on a continuing basis to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds will be used to support this program.

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

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

(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.

in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### 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? City or county owned hospitals or clinics with radiation producing equipment may be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.870, 211.890, and 211.993.

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 will not generate revenue for state or local governments in the first year.

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

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of June 7, 2007 Meeting**

The June meeting of the Administrative Regulation Review Subcommittee was held on Thursday, June 7, 2007 at 10:00 a.m., in Room 149 of the Capitol Annex. Senator Dick Roeding called the meeting to order, the roll call was taken. The minutes of the May 8, 2007 meeting were approved.

**Present were:**

**Members:** Senators Alice Forgy Kerr, Joey Pendleton, Richard "Dick" Roeding and Gary Tapp; and Representatives Danny Ford, Jimmie Lee, and Ron Weston.

**LRC Staff:** Dave Nicholas, Donna Little, Kara Daniel, Emily Harkenrider, Jennifer Beeler and Ellen Steinberg.

**Guests:** Alicia Sneed, Cynthia Godsey, Gary Stephens, Education Professional Standards Board; Kathryn Dunnigan, Kentucky State Board of Elections; Robert Barnes, Teachers' Retirement System; Jeff Boler, James Grawe, Ed Hall and, Claude Wagner, Kentucky Board of Veterinary Examiners; Jonathan Buckley and David Cox, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors; Karen Alexy, Benjy Kinman, Morgain Sprague, Shawchyl Vorsek; Department of Fish and Wildlife; Karen Howard and Stacy Warnecke, Justice and Public Safety Cabinet; Major Wayne Mayfield, Chuck Stribling, Kembra Taylor, Department of Labor; Virginia Davis, Office of Alcohol Beverage Control; Susan Bush, Department for Natural Resources; Michael Bennett, Terry Slade, Tim House, Office of Housing, Buildings and Construction; Stephanie Mayfield, Medina Tipton, Department for Public Health; Glenn Bryant, Department for Mental Health and Mental Retardation Services; Dana Fugazzi, James Godsey, Roy Mundy, Thomas Shelf, Todd Shipp Transportation Cabinet, Department for Vehicle Registration.

**The Administrative Regulation Review Subcommittee met on June 7, 2007 and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**EDUCATION PROFESSIONAL STANDARDS BOARD: General Administration**

16 KAR 1:030. Procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial. Alicia Sneed, director, represented the board.

In response to a question by Co-Chair Roeding, Ms. Sneed stated that the board did not have the funds to pay for drug testing. The cost of a required drug test was borne by the applicant, who also chose the testing site and had the results sent directly to the board.

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 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.

**Alternative Routes to Certification**

16 KAR 9.080. University-based alternative certification program.

In response to a question by Co-Chair Roeding, Ms. Sneed stated that the alternative certification program for veterans, the Troops to Teachers Program, was not affected by changes to this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Sections 1 to 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 6 to clarify that three (3) documents are incorporated by reference and that two (2) of the

documents have two (2) parts. Without objection, and with agreement of the agency, the amendments were approved.

**KENTUCKY STATE BOARD OF ELECTIONS: Voting**

31 KAR 5:010 & E. Absentee voting for military and overseas citizens for runoff primary elections. Kathryn Dunnigan, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 5 to revise the "Notice and Instructions for Voting in Primary Runoff Election for Military and Kentucky Residents Residing Outside of the United States." Without objection, and with agreement of the agency, the amendments were approved.

**TEACHERS' RETIREMENT SYSTEM: General Rules**

102 KAR 1:175. Investment policies. Robert Barnes, deputy executive secretary, represented the retirement system.

In response to a question by Co-Chair Roeding, Mr. Barnes stated that the changes to this administrative regulation allowed the system more flexibility to take advantage of changing investment opportunities in the market.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY 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 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.

**GENERAL GOVERNMENT: Kentucky Board of Veterinary Examiners: Examiners**

201 KAR 16:010. Code of ethical conduct. Dr. Ed Hall, board member; James Grawe, assistant attorney general; and Claude Wagner, director, Division of Occupations and Professions, represented the board.

In response to a question by Senator Kerr, Dr. Hall stated that the veterinarians' code of ethics required a veterinarian to treat a stray animal to stabilize its medical condition and to attempt to locate the animal's owner. If no owner was located, the animal would be taken to the local animal control office or humane society.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

**Kentucky State Board of Licensure for Professional Engineers and Land Surveyors: Board**

201 KAR 18:111. Repeal of 201 KAR 18:110. David Cox, executive director; and Jonathan Buckley, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to correct the number of the administrative regulation that is being repealed. Without objection, and with agreement of the agency, the amendments were approved.

**COMMERCE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 2.132. Elk depredation permits, landowner cooperation permits, and quota hunts. Morgain Sprague, general counsel; Benjy Kinman, director; Karen Alexy, director, and Shawchyl Vorsek, biologist, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:172. Deer hunting seasons, zones and requirements.

In response to a question by Senator Tapp, Ms. Sprague stated that hunters were made aware of the changes through publication in the hunting guide. Ms. Alexy stated that it was publicized through press releases as well and that with any change to an administrative regulation, hunters first received warnings when enforcement began. She stated that electronic decoys were prohibited due to ethical concerns.

A motion was made and seconded to approve the following amendments: to amend Section 11 to correct a cross-reference error. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:175. Repeal of 301 KAR 2:174.

301 KAR 2:177. Repeal of 301 KAR 2:179.

301 KAR 2:178. Deer hunting on Wildlife Management Areas and State Parks.

301 KAR 2:195. Raptor propagation and falconry.

In response to a question by Co-Chair Roeding, Ms. Vorisek stated that Kentucky had 40 to 50 permit holders, mostly in western Kentucky and the Louisville area. She stated that the changes to this administrative regulation were minor and brought it up to date.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct 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 Sections 1-11 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (4) to amend Section 12 to incorporate by reference the required form. Without objection, and with agreement of the agency, the amendments were approved.

#### Hunting and Fishing

301 KAR 3:022. License, tag and permit fees.

In response to a question by Senator Tapp, Mr. Kinman stated the fees were increased to recover the costs of raising the fish used to stock ponds. He stated the department would still not recover all of the costs it incurred. He stated it was still a good value because the charge on the open market was \$250 to \$500 per acre.

In response to a question by Representative Ford, Ms. Sprague stated that currently, retired teachers are the only state employees eligible to receive a license for disabled individuals. She stated that the department would reexamine the categories of individuals who qualified for a disability license.

#### JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: DNA

502 KAR 32:010 & E. Centralized database for DNA identification records. Karen Howard, attorney; Stacy Wamecke, DNA database supervisor; and Maj. Wayne Mayfield, commissioner of forensic services, represented the department.

In response to questions by Representative Lee, Maj. Mayfield stated that the crime lab backlog for DNA tests was four to six months. He stated that analysis was performed based on the priority of the case and amount of time before the trial. He stated that only the central laboratory performed DNA analysis and that a satellite DNA lab should be created for western Kentucky to reduce the burden on the central lab. He stated that the department would include its needs in its budget request. He stated that resources had been requested in the past but had not been included in the executive budget. He stated he would be happy to meet with members of the legislature about these issues.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 6, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Labor: Office of Occupational Safety and Health: Occupational Safety and Health

803 KAR 2:300. General. Kembra Taylor, attorney, and Chuck Stnbling, safety standards specialist, represented the office.

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 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.

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

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 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.

803 KAR 2:318. Electrical.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Department of Public Protection: Office of Alcoholic Beverage Control: Quotas

804 KAR 9:040. Retail package liquor license quota. Virginia Davis, resource management analyst, represented the department.

#### Department for Natural Resources: Miner Training, Education and Certification

805 KAR 7:010. Definitions for 805 KAR Chapter 7. Susan Bush, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Section 1 to comply with the drafting and format 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.

805 KAR 7:100. Requirements for belt examiner.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 to 3 to comply with the drafting and format 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.

#### Department of Public Protection: Office of Housing, Buildings and Construction: Building Code

815 KAR 7:125. Kentucky Residential Code. Mike Bennett, staff attorney; Tim House, Director, Division of Plumbing; and Terry

Slade, director, Division of Building Codes Enforcement, represented the department.

In response to questions by Representative Ford, Mr. Slade stated that a county with an inspection program for one- and two-family dwellings that did not have its own inspector would have to use an inspector from another area. He stated a county did not have to adopt the inspection program for one- and two-family dwellings although the building code is mandatory statewide. He stated that 50 to 60 counties have not adopted an inspection program.

Mr. House stated that the inspector in Pulaski County recently retired and left ten counties without a local inspector. He stated that had created a backlog for the Division of Building Code and Enforcement inspectors which resulted in a 30- to 40-day delay for inspections in those counties. He stated that this administrative regulation updated the residential code but would not add to the delay.

Senator Tapp stated the department should make an extra effort to perform inspections in those ten counties. He stated the local government should be encouraged to hire a new inspector.

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.

#### Plumbing

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

In response to a question by Senator Tapp, Mr. House stated that CPVC manufacturers did not recommend the use of CPVC-threaded adapters to transition to metal. The changes to this administrative regulation prohibited their use. A CPVC adapter with brass threads would meet the new requirements.

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; (3) to amend Section 1 to correct punctuation; (4) to amend Sections 2, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (5) to delete repetitive language from Section 6. Without objection, and with agreement of the agency, the amendments were approved.

#### CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Diseases

902 KAR 2:080. Sexually transmitted diseases. Stephanie Mayfield, physician director, and Medina Tipton, health policy specialist, represented the department.

A motion was made and seconded to approve the following amendments: (1) to add a citation to the RELATES TO paragraph; (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 and 4 to replace acronyms with proper names used for the first time, to move a requirement out of the definitions section, and to use consistent terms; and (4) to amend Sections 1, 4, and 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.

#### Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care

908 KAR 3:050. Per diem rate pursuant to KRS 210.710-760. Glenn Bryant represented the division.

In response to a question by Representative Lee, Mr. Bryant stated that the increases in the per diem rate would have little impact on individuals currently in mental facilities because a patient's ability to pay was still considered and the means testing amount

was increased as well.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to more accurately reflect the contents of this administrative regulation; (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct punctuation errors and statutory citations; 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.

#### 908 KAR 3:060. "Means test" pursuant to the "Patient Liability Act of 1978."

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to more accurately reflect the contents of this administrative regulation; (2) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (3) to amend Sections 2, 3, 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.

#### Other Business:

Co-Chair Roeding stated he wanted to remind agency representatives of the requirements of KRS 13A.240 regarding the regulatory impact analysis for new and amended regulations. He stated that question 4 of the regulatory impact analysis, which reflected the statutory requirements, required a three-part analysis that addressed: (1) the action required of affected entities; (2) the estimate of costs imposed on affected entities, and (3) the benefits that may accrue to affected entities as a result of compliance with the new or amended regulation. He stated this information is important to the subcommittee members, the staff, and the regulated community and that some agencies have not been answering the questions clearly.

Pursuant to KRS 13A.030(1)(a), 601 KAR 1:055 was considered as it relates to transportation of farm vehicles within the state and recent problems with inappropriate use of this administrative regulation to stop farm vehicles and threaten to issue citations for failure to comply with federal regulations.

Dana Fugazzi, attorney; Roy Mundy, commissioner; and Todd Shipp, attorney, represented the Transportation Cabinet. Senator Pendleton stated that he met with agency representatives and they reached an agreement regarding how the administrative regulation should be amended to resolve recent problems. He stated that the cabinet intended to file an amended version of this administrative regulation within the next 30 days. Ms. Fugazzi stated that there had been confusion regarding enforcement of this administrative regulation and that her office will work with the Department of Vehicle Enforcement to resolve it.

The following administrative regulations were deferred to the next meeting of the subcommittee:

#### TEACHERS' RETIREMENT SYSTEM: General Rules

102 KAR 1:030. Substitute teachers and nonuniversity, non-community college part-time members.

102 KAR 1:036. Part-time service for university, college, and community college members.

102 KAR 1:038. Fractional service year for members initially employed on a full-time basis.

#### GENERAL GOVERNMENT: Board of Physical Therapy: Board

201 KAR 22:020. Eligibility and credentialing procedure.

#### EDUCATION CABINET: Kentucky Board of Education: Department of Education: Exceptional and Handicapped Programs

707 KAR 1:300. Child find, evaluation, and reevaluation.

707 KAR 1:331. Repeal of 707 KAR 1:330, Comprehensive system of personnel.

707 KAR 1:360. Confidentiality of information.

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707 KAR 1:370. Children with disabilities enrolled in private schools.

707 KAR 1:380. Monitoring and recovery of funds.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Department for Natural Resources: 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.

**Office of Charitable Gaming: Charitable Gaming**

820 KAR 1:001. Definitions for 820 KAR Chapter 1.

820 KAR 1:015. Issuance of annual license for a charitable organization.

820 KAR 1:029. Facility licensees.

820 KAR 1:055. Charity fundraising event standards.

820 KAR 1:056. Special limited charity fundraising event standards.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: 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 July 9, 2007 at 10 a.m.

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON AGRICULTURE  
AND NATURAL RESOURCES  
Meeting of June 13, 2007**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture and Natural Resources for its meeting of June 13, 2007, having been referred to the Committee on June 6, 2007, pursuant to KRS 13A.290(6):

301 KAR 2:122 ; 301 KAR 2:185 ; 301 KAR 2 251; 401 KAR 5.201; Repeal of 401 KAR 5:200; 401 KAR 8 040; 401 KAR 8.070; 401 KAR 8.075; 401 KAR 8:150; 401 KAR 8:160; 401 KAR 8:162; 401 KAR 8:250; 401; KAR 8.501; Repeal of 401 KAR 8:500; 401 KAR 8 510; 401 KAR 8:550 ; 401 KAR 30 005; 401 KAR 30:020; 401 KAR 30.035; 401 KAR 30 040; 401 KAR 30 071; Repeal of 401 KAR 30:010, and 30:070; 401 KAR 31:005; 401 KAR 31:010; 401 KAR 31:020; 401 KAR 31:030; 401 KAR 31:040; 401 KAR 31.050; 401 KAR 31:070; 401 KAR 31:100; 401 KAR 31:110; 401 KAR 31:121; Repeal of 401 KAR 31:060, 31:120, and 31:190; 401 KAR 31:160; 401 KAR 32 005; 401 KAR 32 010, 401 KAR 32:020; 401 KAR 32.030; 401 KAR 32.040; 401 KAR 32:050; 401 KAR 32:060; 401 KAR 32.065; 401 KAR 32.100; 401 KAR 33:005; 401 KAR 33.010; 401 KAR 33.020; 401 KAR 33.030; 401 KAR 34 005; 401 KAR 34:010; 401 KAR 34:020; 401 KAR 34 030; 401 KAR 34.040; 401 KAR 34.050; 401 KAR 34.060; 401 KAR 34 070; 401 KAR 34:180; 401 KAR 34:190; 401 KAR 34.200, 401 KAR 34:210; 401 KAR 34:220; 401 KAR 34 230, 401 KAR 34:240; 401 KAR 34.245; 401 KAR 34 250; 401 KAR 34:275; 401 KAR 34.280; 401 KAR 34 281; 401 KAR 34 285; 401 KAR 34 287, 401 KAR 34:290, 401 KAR 34.320; 401 KAR 34 330; 401 KAR 34.370, 401 KAR 35:005; 401 KAR 35:010; 401 KAR 35:020; 401 KAR 35:030; 401 KAR 35.040; 401 KAR 35.050; 401 KAR 35.060; 401 KAR 35:070; 401 KAR 35:180; 401 KAR 35:190; 401 KAR 35 200; 401 KAR 35:210; 401 KAR 35:220; 401 KAR 35:230; 401 KAR 35 240; 401 KAR 35:245; 401 KAR 35:250; 401 KAR 35:260; 401 KAR 35:270; 401 KAR 35:275; 401 KAR 35:280; 401 KAR 35:281; 401 KAR 35.285, 401 KAR 35.290; 401 KAR 35:310; 401 KAR 35.320; 401 KAR 35:330; 401 KAR 35:340; 401 KAR 35.350, 401 KAR 36:005; 401 KAR 36:020; 401 KAR 36.025; 401 KAR 36:030; 401 KAR 36:060; 401 KAR 36:070; 401 KAR 36:080; 401 KAR 36:090; 401 KAR 37:005; 401 KAR 37.010; 401 KAR 37.020; 401 KAR 37:030; 401 KAR 37.040; 401 KAR 37.050; 401 KAR 37:060; 401 KAR 38 005; 401 KAR 38.010; 401 KAR 38.020, 401 KAR 38.025; 401 KAR 38.030; 401 KAR 38:040; 401 KAR 38 050; 401 KAR 38 060; 401 KAR 38.070, 401 KAR 38:080; 401 KAR 38 090; 401 KAR 38:101; Repeal of 401 KAR 38.100; 401 KAR 38:150, 401 KAR 38:160; 401 KAR 38:170; 401 KAR 38 180; 401 KAR 38:190; 401 KAR 38:200; 401 KAR 38:210; 401 KAR 38:230; 401 KAR 38 240; 401 KAR 38.250; 401 KAR 38.260, 401 KAR 38 270; 401 KAR 38.290, 401 KAR 38.300; 401 KAR 38.310; 401 KAR 38 320; 401 KAR 38:330; 401 KAR 38:500; 401 KAR 43:005; 401 KAR 43 010; 401 KAR 43:020; 401 KAR 43 030, 401 KAR 43:040; 401 KAR 43 050, 401 KAR 43 060; 401 KAR 43.070; 401 KAR 44 005; 401 KAR 44 010, 401 KAR 44:020; 401 KAR 44.030; 401 KAR 44:040; 401 KAR 44:050; 401 KAR 44 060, 401 KAR 44.070, 401 KAR 44.080; 401 KAR 51:220; and 401 KAR 60:020.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

401 KAR 51:220

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 13, 2007 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

## **CUMULATIVE SUPPLEMENT**

### **Locator Index - Effective Dates**

**A - 2**

The Locator Index lists all administrative regulations published in VOLUME 34 of the Administrative Register from July, 2007 through June, 2008. 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 33 are those administrative regulations that were originally published in VOLUME 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

### **KRS Index**

**A - 9**

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 34 of the Administrative Register.

### **Subject Index**

**A - 10**

The Subject Index is a general index of administrative regulations published in VOLUME 34 of the Administrative Register, and is mainly broken down by agency.



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	33 Ky.R. Page No.	Effective Date	Regulation Number	33 Ky.R. Page No.	Effective Date
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## VOLUME 33

The administrative regulations listed under VOLUME 33 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed, or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first )

31 KAR 5 010E	3325	4-2-07
201 KAR 20:070E	3586	5-11-07
301 KAR 2 221E	1493	11-1-06
301 KAR 2.222E	1494	11-1-06
301 KAR 2:223E	1500	11-1-06
502 KAR 32 010	3327	4-12-07
806 KAR 17:540E	1233	10-13-06
806 KAR 17:545E	1235	10-13-06
806 KAR 17:555E	1238	10-13-06
902 KAR 45:150E	1502	11-14-06
907 KAR 1.025E	3143	3-1-07
907 KAR 1:155		
Resubmitted	1058	9-1-06
907 KAR 3 010E		
Resubmitted	1062	9-1-06
908 KAR 2:190E	1507	10-17-06

### ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 4.080		
Amended	3224	
As Amended	3589	
11 KAR 5 033		
Amended	3225	
As Amended	3589	
11 KAR 5:034		
Amended	3226	
As Amended	3590	
11 KAR 5:140		
Amended	3228	
11 KAR 6.010		
Amended	3230	
As Amended	3590	
11 KAR 16:010		
Amended	3232	
As Amended	3592	
11 KAR 16.070	3304	
As Amended	3593	
16 KAR 1:030		
Amended	3423	
16 KAR 9 080	3567	(See 34 Ky R.)
17 KAR 1.020	3078	
As Amended	3593	
31 KAR 3:010		
Amended	3235	
As Amended	3595	
31 KAR 4:100		
Amended	3237	
As Amended	3596	
31 KAR 5.010		
Amended	3425	(See 34 Ky R.)
101 KAR 2:046		
Amended	4195	
101 KAR 2:056		
Amended	4197	
101 KAR 2 066		
Amended	4199	
102 KAR 1:030		
Amended	3427	
102 KAR 1:036		
Amended	3428	

102 KAR 1:038		
Amended	3430	
102 KAR 1:175		
Amended	3431	(See 34 Ky R.)
103 KAR 20.500	1013	
106 KAR 5 005	3113	
As Amended	3597	
106 KAR 5.010	3114	
As Amended	3598	
106 KAR 5:020	3116	
As Amended	3599	
106 KAR 5 030	3118	
As Amended	3600	
106 KAR 5:040	3120	
As Amended	3601	
201 KAR 2:250		
Amended	4201	
201 KAR 2 260	3305	
As Amended	3602	
201 KAR 9.460	4269	
201 KAR 11:220		
Amended	3434	
201 KAR 16 010		
Amended	3238	(See 34 Ky R.)
201 KAR 16:060		
Amended	3240	
201 KAR 18 040		
Amended	4203	
201 KAR 18:111	3569	(See 34 Ky.R.)
201 KAR 20 070		
Amended	4205	
201 KAR 20.370		
Amended	4207	
201 KAR 20:411		
Amended	4209	
201 KAR 22 020		
Amended	3436	
201 KAR 22.040		
Amended	3438	
201 KAR 30:180		
Amended	4211	
201 KAR 36:070		
Amended	3242	
202 KAR 6:020		
Amended	4214	
202 KAR 6 030		
Amended	4217	
202 KAR 6.060		
Amended	4218	
202 KAR 6 070		
Amended	4220	
202 KAR 6:100		
Amended	4221	
301 KAR 2:122	2831	
301 KAR 2:132		
Amended	3440	(See 34 Ky.R.)
301 KAR 2:172		
Amended	3444	(See 34 Ky R.)
301 KAR 2.175	3570	
301 KAR 2.177	3571	
301 KAR 2:178		
Amended	3447	
301 KAR 2:185		
Amended	3243	
As Amended	3603	
301 KAR 2 195		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	33 Ky.R. Page No.	Effective Date	Regulation Number	33 Ky.R. Page No.	Effective Date
Amended	3452	(See 34 Ky.R.)	401 KAR 31:070		
301 KAR 2:251			Amended	1962	
Amended	3426		As Amended	3700	
As Amended	3604		401 KAR 31:100		
301 KAR 3.022			Amended	1964	
Amended	3456		As Amended	3701	
301 KAR 5 030			401 KAR 31.110		
Amended	4224		Amended	1966	
401 KAR 5:201	3307		As Amended	3702	
401 KAR 8:040			401 KAR 31:121	2236	
Amended	1641		401 KAR 31:160		
As Amended	3606		Amended	1967	
401 KAR 8.070			As Amended	3702	
Amended	1643		401 KAR 31:170		
Amended	2980		Amended	1970	
As Amended	3608		As Amended	3704	
401 KAR 8:075			401 KAR 32 005		
Amended	1651		Amended	1980	
Amended	2987		As Amended	3713	
As Amended	3615		401 KAR 32.010		
401 KAR 8 150			Amended	1994	
Amended	1662		As Amended	3726	
As Amended	3625		401 KAR 32.020		
401 KAR 8:160			Amended	1996	
Amended	1666		As Amended	3727	
Amended	2998		401 KAR 32:030		
As Amended	3628		Amended	1998	
401 KAR 8 162	1750		Amended	3208	
As Amended	3631		As Amended	3728	
401 KAR 8.250			401 KAR 32:040		
Amended	1671		Amended	2001	
Amended	3003		As Amended	3730	
As Amended	3634		401 KAR 32 050		
401 KAR 8:501	1754		Amended	2003	
401 KAR 8:510			As Amended	3731	
Amended	1677		401 KAR 32.060	2237	
Amended	3009		As Amended	3733	
As Amended	3640		401 KAR 32:065	2238	
401 KAR 8:550			As Amended	3734	
Amended	1685		401 KAR 32:100		
Amended	3017		Amended	2006	
As Amended	3648		As Amended	3734	
401 KAR 30 005			401 KAR 33:005		
Amended	2369		Amended	2378	
As Amended	3652		As Amended	3737	
401 KAR 30.020			401 KAR 33:010		
Amended	2375		Amended	2393	
As Amended	3656		As Amended	3750	
401 KAR 30.035	2835		401 KAR 33.020		
As Amended	3658		Amended	2394	
401 KAR 30.040			As Amended	3750	
Amended	2377		401 KAR 33:030		
As Amended	3658		Amended	2397	
401 KAR 30:071	2837		As Amended	3752	
401 KAR 31 005			401 KAR 34:005		
Amended	1914		Amended	2010	
As Amended	3659		As Amended	3752	
401 KAR 31.010			401 KAR 34.010		
Amended	1928		Amended	2026	
As Amended	3672		As Amended	3766	
401 KAR 31:020			401 KAR 34.020		
Amended	1941		Amended	2028	
As Amended	3683		As Amended	3767	
401 KAR 31.030			401 KAR 34:030		
Amended	1943		Amended	2033	
As Amended	3684		As Amended	3771	
401 KAR 31:040			401 KAR 34 040		
Amended	1945		Amended	2035	
As Amended	3685		As Amended	3772	
401 KAR 31:050			401 KAR 34:050		
Amended	1961		Amended	2037	
As Amended	3699		As Amended	3774	

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Regulation Number	33 Ky.R. Page No.	Effective Date	Regulation Number	33 Ky.R. Page No.	Effective Date
401 KAR 34 060			Amended	2421	
Amended	2040		As Amended	3865	
As Amended	3775		401 KAR 35 040		
401 KAR 34 070			Amended	2423	
Amended	2050		As Amended	3867	
As Amended	3784		401 KAR 35 050		
401 KAR 34 180			Amended	2425	
Amended	2056		As Amended	3868	
As Amended	3789		401 KAR 35 060		
401 KAR 34 190			Amended	2428	
Amended	2058		As Amended	3870	
As Amended	3790		401 KAR 35 070		
401 KAR 34 200			Amended	2432	
Amended	2064		As Amended	3873	
As Amended	3795		401 KAR 35 180		
401 KAR 34 210			Amended	2439	
Amended	2069		As Amended	3879	
As Amended	3799		401 KAR 35 190		
401 KAR 34 220			Amended	2441	
Amended	2073		As Amended	3880	
As Amended	3802		401 KAR 35 200		
401 KAR 34 230			Amended	2448	
Amended	2078		As Amended	3886	
As Amended	3806		401 KAR 35 210		
401 KAR 34 240			Amended	2452	
Amended	2083		As Amended	3888	
As Amended	3810		401 KAR 35 220		
401 KAR 34 245			Amended	2455	
Amended	2087		As Amended	3890	
As Amended	3812		401 KAR 35 230		
401 KAR 34 250			Amended	2458	
Amended	2090		As Amended	3892	
As Amended	3814		401 KAR 35 240		
401 KAR 34 275			Amended	2462	
Amended	2092		As Amended	3895	
As Amended	3815		401 KAR 35 245		
401 KAR 34 280			Amended	2464	
Amended	2099		As Amended	3896	
As Amended	3821		401 KAR 35 250		
401 KAR 34 281			Amended	2468	
Amended	2105		As Amended	3898	
As Amended	3826		401 KAR 35 260		
401 KAR 34 285			Amended	2470	
Amended	2114		As Amended	3900	
As Amended	3834		401 KAR 35 270		
401 KAR 34 287			Amended	2472	
Amended	2118		As Amended	3900	
As Amended	3837		401 KAR 35 275		
401 KAR 34 290			Amended	2473	
Amended	2120		As Amended	3901	
As Amended	3838		401 KAR 35 280		
401 KAR 34 320			Amended	2480	
Amended	2123		As Amended	3906	
As Amended	3840		401 KAR 35 281		
401 KAR 34 330			Amended	2486	
Amended	2125		As Amended	3911	
As Amended	3841		401 KAR 35 285		
401 KAR 34 360			Amended	2501	
Amended	2127		As Amended	3926	
As Amended	3842		401 KAR 35 290		
401 KAR 34 370			Amended	2505	
As Amended	3848		As Amended	3928	
401 KAR 35 005			401 KAR 35 310		
Amended	2398		Amended	2508	
As Amended	3848		As Amended	3930	
401 KAR 35 010			401 KAR 35 320		
Amended	2414		Amended	2509	
As Amended	3862		As Amended	3930	
401 KAR 35 020			401 KAR 35 330		
Amended	2417		Amended	2511	
As Amended	3863		As Amended	3931	
401 KAR 35 030			401 KAR 35 340		
				2838	

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As Amended	3932		Amended	2696	
401 KAR 35:350	2839		As Amended	4100	
As Amended	3932		401 KAR 38 090		
401 KAR 36:005			Amended	2698	
Amended	2513		As Amended	4101	
As Amended	3932		401 KAR 38:101	2846	
401 KAR 36.020			401 KAR 38:150		
Amended	2527		Amended	2705	
As Amended	3945		As Amended	4107	
401 KAR 36 025			401 KAR 38:160		
Amended	2548		Amended	2707	
As Amended	3965		As Amended	4107	
401 KAR 36:030			401 KAR 38 170		
Amended	2560		Amended	2709	
As Amended	3975		As Amended	4108	
401 KAR 36 060			401 KAR 38:180		
Amended	2562		Amended	2711	
As Amended	3976		As Amended	4109	
401 KAR 36:070			401 KAR 38:190		
Amended	2563		Amended	2713	
As Amended	3976		As Amended	4110	
401 KAR 36.080	2841		401 KAR 38.200		
As Amended	3977		Amended	2715	
401 KAR 36 090	2842		As Amended	4111	
As Amended	3977		401 KAR 38:210		
401 KAR 37.005			Amended	2717	
Amended	2565		As Amended	4112	
As Amended	3978		401 KAR 38 230		
401 KAR 37.010			Amended	2719	
Amended	2579		As Amended	4113	
As Amended	3991		401 KAR 38.240		
401 KAR 37 020	2844		Amended	2721	
As Amended	3999		As Amended	4114	
401 KAR 37.030			401 KAR 38:250		
Amended	2588		Amended	2722	
As Amended	3999		As Amended	4114	
401 KAR 37:040			401 KAR 38.260		
Amended	2594		Amended	2724	
As Amended	4004		As Amended	4115	
401 KAR 37.050			401 KAR 38:270		
Amended	2647		Amended	2727	
As Amended	4059		As Amended	4117	
401 KAR 37:060	2845		401 KAR 38:290	2847	
As Amended	4060		As Amended	4117	
401 KAR 38.005			401 KAR 38 300	2848	
Amended	2648		As Amended	4118	
As Amended	4060		401 KAR 38.310	2849	
401 KAR 38:010			As Amended	4118	
Amended	2663		401 KAR 38:320	2851	
As Amended	4073		As Amended	4118	
401 KAR 38:020			401 KAR 38:330	2852	
Amended	2666		As Amended	4118	
As Amended	4076		401 KAR 38.500		
401 KAR 38.025			Amended	2729	
Amended	2669		As Amended	4119	
As Amended	4078		401 KAR 43:005		
401 KAR 38:030			Amended	2730	
Amended	2671		As Amended	4119	
As Amended	4079		401 KAR 43 010		
401 KAR 38 040			Amended	2744	
Amended	2675		As Amended	4132	
As Amended	4082		401 KAR 43.020		
401 KAR 38:050			Amended	2746	
Amended	2681		As Amended	4133	
As Amended	4087		401 KAR 43.030		
401 KAR 38 060			Amended	2750	
Amended	2686		As Amended	4136	
As Amended	4091		401 KAR 43 040		
401 KAR 38:070			Amended	2754	
Amended	2693		As Amended	4139	
As Amended	4097		401 KAR 43:050		
401 KAR 38.080			Amended	2756	

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As Amended	4140		Amended	3042	
401 KAR 43:060			As Amended	4162	
Amended	2758		701 KAR 5:110		
As Amended	4141		Amended	3045	
401 KAR 43:070			702 KAR 7:065		
Amended	2759		Amended	3461	(See 34 Ky R.)
As Amended	4141		707 KAR 1:280		
401 KAR 44 005			Amended	3463	(See 34 Ky R.)
Amended	2761		707 KAR 1:290		
As Amended	4142		Amended	3468	
401 KAR 44:010			707 KAR 1:300		
Amended	2765		Amended	3470	
As Amended	4144		707 KAR 1:310		
401 KAR 44.020			Amended	3473	
Amended	2767		707 KAR 1:320		
As Amended	4146		Amended	3476	(See 34 Ky.R.)
401 KAR 44.030			707 KAR 1:331	3572	
Amended	2770		707 KAR 1:340		
As Amended	4148		Amended	3480	(See 34 Ky.R.)
401 KAR 44.040			707 KAR 1:350		
Amended	2772		Amended	3488	
As Amended	4148		707 KAR 1:360		
401 KAR 44 050			Amended	3490	
Amended	2775		707 KAR 1:370		
As Amended	4151		Amended	3492	
401 KAR 44.060			707 KAR 1 380		
Amended	2781		Amended	3496	
As Amended	4155		802 KAR 1:010		
401 KAR 44 070			Amended	2202	
Amended	2784		Amended	3217	
As Amended	4158		As Amended	4164	
401 KAR 44:080			803 KAR 2:300		
Amended	2786		Amended	3499	(See 34 Ky.R.)
As Amended	4159		803 KAR 2:305		
401 KAR 51 220			Amended	3501	(See 34 Ky.R.)
Amended	3036		803 KAR 2:318		
As Amended	4159		Amended	3503	(See 34 Ky.R.)
401 KAR 57:002			804 KAR 9 040		
Amended	4227		Amended	3506	
401 KAR 58 025			805 KAR 7:010		
Amended	4229		Amended	3076	
401 KAR 60.005			Amended	3413	(See 33 Ky.R.)
Amended	4231		805 KAR 7.100	3124	
401 KAR 60:020	2853		Amended	3414	(See 33 Ky R.)
Amended	3411		805 KAR 11.001	3126	
As Amended	4161		Amended	3416	
401 KAR 60:670			805 KAR 11:010	3128	
Amended	4234		Amended	3417	
401 KAR 63.002			805 KAR 11 020	3130	
Amended	4236		Amended	3419	
401 KAR 63:023(r)	4270		806 KAR 6:120	4290	
401 KAR 64 001	4271		806 KAR 12:120	4292	
401 KAR 64:005	4275		806 KAR 12:140	4294	
401 KAR 64:010	4279		806 KAR 12 150	4299	
401 KAR 64:020	4283		806 KAR 12 160	4301	
401 KAR 64:030	4286		806 KAR 12:170	4305	
401 KAR 64.050	4288		806 KAR 14:005		
501 KAR 6 020			Amended	4258	
Amended	4241		806 KAR 15 060	4307	
501 KAR 6:030			806 KAR 15 070	4311	
Amended	4243		815 KAR 4 010		
501 KAR 6 070			Amended	3249	
Amended	4245		As Amended	4167	
501 KAR 6 240			815 KAR 7:120		
Amended	4247		Amended	3250	
502 KAR 20.020			As Amended	4168	
Amended	4249		815 KAR 7:125		
502 KAR 32.010			Amended	3253	(See 34 Ky.R.)
Amended	3459	(See 34 Ky R.)	815 KAR 10.060		
503 KAR 1:170			Amended	3255	
Amended	4253		As Amended	4169	
603 KAR 4.045			815 KAR 20.015	3308	

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As Amended	4172		820 KAR 1.055		
815 KAR 20 020			Amended	3526	
Amended	3258		820 KAR 1:056		
815 KAR 20:078			Amended	3528	
Amended	3262		820 KAR 1:057		
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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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