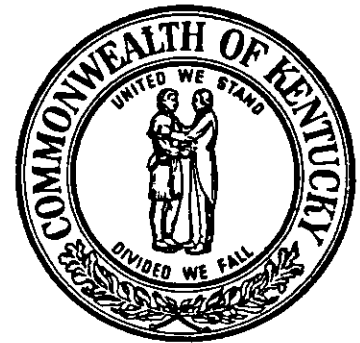


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 35, NUMBER 7  
THURSDAY, JANUARY 1, 2008 2009

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#### MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet January 13, 2008 at 10 a.m. in room 149 Capitol Annex. See tentative agenda on pages 1703-1704 of this Administrative Register.

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, JANUARY 13, 2009, at 10:00 a.m., Room 149 Capitol Annex**

**GENERAL GOVERNMENT CABINET  
Board of Optometric Examiners**

**Board**

201 KAR 5:120 & E. Practice of optometry outside of regular office for a charitable purpose. ("E" expires 5/11/09)

**Board of Nursing**

**Board**

201 KAR 20:161. Investigation and disposition of complaints.

201 KAR 20:400. Delegation of nursing tasks.

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

**Hunting and Fishing**

301 KAR 3:022. License, tag, and permit fees.

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection**

**Division of Water**

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

401 KAR 8:020. Public and semipublic water supplies; general provisions.

401 KAR 8:061. Repeal of 401 KAR 8:060, 8:162, 8:350, 8:400, and 8:420

401 KAR 8:070. Public notification.

401 KAR 8:075. Consumer confidence reports.

401 KAR 8:150. Disinfection, filtration, and recycling.

401 KAR 8:200. Microbiological monitoring.

401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, and maximum contaminant levels.

401 KAR 8:300. Lead and copper.

401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors.

401 KAR 8:550. Radionuclides.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Department for Workforce Investment  
Office of Employment and Training**

**Unemployment**

787 KAR 1:090. Unemployed worker's reporting requirements.

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

**Licensing**

804 KAR 4:370. Entertainment destination center license.

804 KAR 4:390. License renewals.

804 KAR 4:400. ABC basic application form incorporated by reference.

**Quotas**

804 KAR 9:010. Retail liquor license limit.

804 KAR 9:040. Retail package liquor license quota.

**Department for Natural Resources  
Office of Mine Safety and Licensing**

**Division of Mining**

805 KAR 5:030. Prohibition against working or traveling under an unsupported roof; penalties.

**Miner Training, Education, and Certification**

805 KAR 7:060. Program approval.

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

**Department of Insurance**

**Health Insurance Contracts**

806 KAR 17:480. Uniform evaluation and reevaluation of providers.

**Kentucky Horse Racing Commission**

**Thoroughbred Racing**

810 KAR 1:025 & E. Licensing thoroughbred racing. ("E" expires 5/2/2009)

**Harness Racing**

811 KAR 1:070 & E. Licensing standardbred racing. ("E" expires 5/2/2009)

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Public Health**

902 KAR 45:005. Kentucky Food Code.

**Department for Medicaid Services**

**Medicaid Services**

907 KAR 1:585. Estate recovery.

907 KAR 1:645. Resource standards for Medicaid.

907 KAR 1:650. Trust and transferred resource requirements for Medicaid.

907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid.

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**Payment and Services**

907 KAR 3:210 & E. Acquired brain injury services long term care waiver and reimbursement. ("E" expires 5/9/2009)

**Department for Aging and Independent Living**

**Aging Services**

910 KAR 1:240. Certification of assisted-living communities.

**Department for Community Based Services**

**Child Abuse and Domestic Violence Services**

920 KAR 2:020. Domestic violence batterer intervention provider certification standards.

**Department for Income Support**

**Child Support**

921 KAR 1:020. Child support enforcement program; confidentiality, program administration contracts, and agreements.

921 KAR 1:390. Child support enforcement program paternity establishment.

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

**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.

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

**Review Procedure**

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, DECEMBER 15, 2008

STATEMENT OF EMERGENCY  
301 KAR 2:221E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting waterfowl. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the waterfowl season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by December 15, 2008.

BENJY KINMAN, Deputy Commissioner  
For Dr. Jonathan Gassett, Commissioner  
STEVEN L. BESHEAR, Governor

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

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. Parts 20, 21

EFFECTIVE: November 21, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl season dates and limits. This administrative regulation establishes the limits and dates within federal waterfowl hunting frameworks established by 50 C.F.R. Part 20. EO 2008-516, effective June 16, 2008 reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Conservation Snow Goose Order" is defined by 50 C.F.R. Parts 20 and 21.

(2) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(3) "Snow goose" means a snow goose or Ross' goose.

(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 301 KAR 2:225, or 301 KAR 2:226, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser. (1) Season dates:

(a) All ducks except for canvasback, November 27 through January 25.

(b) The season on canvasback shall be closed. [There shall be a split season statewide.

(a) November 22 through November 25; and

(b) December 3 through the last Sunday in January.]

(2) The gun and archery daily bag limit shall be:

(a) Six (6) ducks, which shall not include more than:

1. Four (4) mallards, which shall not include more than one (1) hen mallard;

2. ~~Three (3)~~~~[Two (2)]~~ wood ducks;

3. One (1) black duck;

4. Two (2) redheads;

5. One (1) pintail;

6. ~~[Two (2)]~~ Scaup;

a. One (1) scaup from November 27 to January 5;

b. Two (2) scaup from January 6 to January 25;

7. Three (3) mottled ducks~~;~~;

8. ~~Two (2) canvasbacks.]~~

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include more than two (2) hooded merganser.

(3) The possession limit[s] shall be double the daily bag limit.

Section 4. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) White-fronted goose and brant season dates: November 23 through January 31.

(2) Snow goose season dates.

(a) Regular season: November 23 through January 31~~;~~.]

(b) Conservation Snow Goose Order~~;~~.]

1. ~~The Western Duck Zone;~~~~[The Conservation Snow Goose Order in the Western Duck Zone shall be open]~~ February 1 through February 6 and February 9~~[4]~~ through March 31.

2. Rest of state: February 1 to March 31.

(3) Canada goose season dates shall be from the starting date listed below through January 31.

(a) The Eastern Goose, Pennyroyal-Coalfield, West-Central Kentucky, and Western Goose Zones shall be open on November 23; and~~[The season shall not open until:~~

~~1. November 23 in the Western Goose Zone;~~

~~2. December 13 in the Eastern Goose Zone;~~

~~3. December 13 in the Pennyroyal-Coalfield Goose Zone;~~

~~4. December 13 in the West-Central Kentucky Hunt Zone; and]~~

(b) There shall be a split season in the northeast Kentucky goose zone:

1. December 27~~[29]~~ through January 4~~[6]~~; and

2. January 19 to January 31.

(4) A person shall not goose hunt in:

(a) The areas of Laurel River Lake as posted by sign; and

(b) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.

(5) The gun and archery daily bag limit shall be:

(a) Six (6) dark geese, to include no more than:

1. Two (2) Canada geese;

2. Two (2) white-fronted geese; and

3. Two (2) brant.

(b) Twenty (20) snow geese; except there shall be no daily limit on snow geese during the Conservation Snow Goose Order.

(6) The possession limit shall be double the daily bag limit, except that there shall not be a possession limit on snow geese.

Section 5. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Kentucky Hunt Zone during a Canada goose season;

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or

(3) One-half (1/2) hour after sunset while hunting snow geese during the Conservation Snow Goose Order.

Section 6. Falconry Waterfowl Season and Limits. (1) Season dates:

(a) Snow geese: November 5 through January 31.

(b) Conservation Snow Goose Order:

1. Western Duck Zone: February 1 through February 6 and February 9~~[4]~~ through March 31.

2. Remainder of state: February 1 through March 31.

(c) Canada Goose season: November 5 through February 1~~;~~, ~~except for that portion of Fulton County in the Western Goose Zone where the Canada Goose season shall be November 10 through February 15;]~~

(d) Other waterfowl: November 5 through February 1.

(2) Daily limit: three (3) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

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(3) Possession limit: six (6) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

Section 7. Permit for Conservation Snow Goose Order. (1) A person hunting snow geese during the Conservation Snow Goose Order shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 224-2244.

(2) A hunter during the Conservation Snow Goose Order shall submit a Conservation Snow Goose Order report by April 10.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: November 13, 2008

FILED WITH LRC: November 21, 2008 at 9 a.m.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2008–09 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing the framework for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for waterfowl hunting under guidance of the Migratory Bird Treaty Act. Changes in the duck season dates are the result of the calendar shift. In 2008, the season on canvas-back ducks will be closed, and the bag limit on scaup ducks will be reduced from two (2) to one (1) for the first forty (40) days of the duck season. The Canada goose season in the Pennyroyal, West-Central, and Eastern goose zones will receive twenty (20) additional days of hunting to be added to the December segment of the season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new of 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 current changes in season dates and/or bag limits will be published in the hunting guide and on the department's website. Hunters will have to review the hunting

guide or website for the updated information to hunt legally during the specified season.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

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

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement 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 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State waterfowl population migration and winter management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state. A more restrictive bag limit on hen mallards was implemented to meet hunter requests to protect hen mallards for enhancement of future breeding stocks.

### STATEMENT OF EMERGENCY 301 KAR 2:222E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting waterfowl on public lands. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the waterfowl season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler by December 15, 2008.

BENJY KINMAN, Deputy Commissioner  
For DR. JONATHAN GASSETT, Commissioner  
STEVEN L. BESHEAR, Governor

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

#### 301 KAR 2:222E. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340, 150.600(1), 50 C.F.R. Parts 20, 21

EFFECTIVE: November 21, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on Wildlife Management Areas and other areas. KRS 150.340 authorizes the department to establish bag ~~[and-cree]~~ limits for waterfowl. This administrative regulation establishes site-specific restrictions on areas in Kentucky regarding waterfowl requirements to optimize public use within sound waterfowl conservation practices. EO 2008-516, effective June 16, 2008 reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. ~~[This administrative regulation establishes waterfowl seasons in the Ballard Wildlife Management Area, Central Kentucky Wildlife Management Area, Cumberland Lake Wildlife Management Area, Addington Enterprises Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellow-bank Wildlife Management Area which differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.]~~

Section 1. Definitions. (1) "Blind" means:

- (a) A concealing enclosure;
- (b) A pit; or
- (c) A boat.

(2) "Blind site" means a specific location identified by the department or approved by the U.S. Army Corps of Engineers where hunting is permitted.

(3) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(4) "Party" means:

- (a) A person hunting alone; or
- (b) From two (2) to four (4) persons who share a blind or blind site.

(5)[(4)] "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(6)[(5)] "Regular waterfowl season" means the late migratory bird hunting seasons referred to in 50 C.F.R. Part 20.

(7)[(6)] "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(8)[(7)] "Waterfowl" is defined in KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing shot:
  - (a) Made of lead;
  - (b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
  - (c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2:224:

(1) A waterfowl hunter shall:

- (a) Hunt from a blind unless hunting in flooded, standing timber;
  - (b) Not hunt from or establish a blind:
    - 1. Within 100 yards of another blind; or
    - 2. Within fifty (50) yards of a property line; and
  - (c) Not possess more than one (1) shotgun while in a blind.
- (2) The requirements of subsection (1) of this section shall not apply when the Conservation Snow Goose Order is the only waterfowl season open, excluding falconry seasons.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a Wildlife Management Area:

(a) A waterfowl hunter shall not establish or hunt from:

- 1. A permanent blind; or
- 2. A blind within 200 yards of:
  - a. Another blind; or
  - b. A waterfowl refuge;

(b) A person shall not hunt in a designated recreation area or access point;



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(c) More than four (4) persons shall not occupy a blind; and

(d) A hunter shall remove decoys and personal effects from the Wildlife Management Area daily, except that a hunter drawn for a multiday hunt may leave decoys in place for the duration of the hunt, at his or her own risk.

(2) A person wishing to establish or use a permanent blind or blind site on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doung Travis Wildlife Management Areas:

(a) Shall first obtain a permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner;

(c) Shall not hold more than one (1) permit per area; and

(d) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, Sloughs, or Doung Travis Wildlife Management Areas:

1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and

2. Shall be eighteen (18) years of age or older.

(3) The holder of a blind permit shall:

(a) Construct or establish his or her blind or blind site before November 20 or forfeit the permit;

(b) Not lock a blind; and

(c) Unless an extension of time is granted, remove his blind and blind materials within thirty (30) days ~~after~~<sup>of</sup> the close of the regular waterfowl season or be ineligible for a permit the following year.

(4) A blind or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-serve basis.

(5) A blind restriction specified in this section shall not apply to a falconer if a gun or archery season is not open.

Section 5. On a Wildlife Management Area: (1)(a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.

(b) If specific hunting dates and times are given in this section, a person shall not hunt waterfowl except on those dates and times.

(c) Paragraph (b) of this subsection shall not apply to a waterfowl hunting season opening before October 15.

(2) A person shall not:

(a) Hunt on an area or portion of an area marked by a sign as closed to hunting;

(b) Enter an area or a portion of an area marked by signs as closed to public access; or

(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County.

(a) Sliding shell limit scale.

1. The shell limit shall be twenty-five (25) when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and

2. The shell limit shall be fifteen (15) when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2).

(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA.

(c) At Ballard Wildlife Management Area:

1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.

2. The duck, coot, and merganser season shall be December ~~3[5]~~ through January ~~25[27]~~.

3. The goose season shall be December ~~3[5]~~ through January 31.

4. Youth waterfowl season shall be the first weekend in February.

5. A waterfowl hunter shall not hunt on a Monday, Tuesday, Christmas Day, or New Year's Day.

6. A waterfowl hunter shall:

a. Apply in advance in accordance with Section 6 of this administrative regulation;

b. Case his gun while using department-supplied transportation

to and from a blind;

c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15; and

d. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:

1. ~~Each party~~<sup>[A person]</sup> shall:

a. Not hunt on a Monday, Tuesday, Christmas Day or New Year's Day;

b. ~~Have in their possession~~<sup>[Check in daily at the designated check station]</sup> by 8 a.m. during the December 3 through January 31 segment of the waterfowl season, a daily check-in card before entering the area to set a blind, place decoys, or hunt~~(duck and Canada Goose season)~~; and

c. Check out the same day by:

(i) Visiting a department-designated check station prior to 8 a.m.; or

(ii) Depositing a card at a department-designated drop point after 8 a.m.<sup>[after 8 a.m. by depositing a card at a department-designated drop point.]</sup>

2. Duck season shall be open one-half (1/2) hour before sunrise to sunset Thanksgiving Day for four (4) consecutive days on portions of Boatwright Wildlife Management Area open to hunting.

3. A department blind or blind site shall be assigned through a daily draw from December 3 through January 31.

4. A blind or blind site shall be offered to another hunter on a first-come, first-served basis, if the blind or blind site has not been assigned during the draw that day.

5. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

6. ~~[Waterfowl hunters shall hunt from department blinds or within twenty-five (25) feet of blind sites as marked by the department.]~~

7. ~~Boat blinds shall not be permitted in flooded timber, except during periods of flood when~~<sup>[where]</sup> no other access is possible and except mobility-impaired hunters may hunt from a boat, with no set-back restriction for those in the party assisting with the hunt. When boat blinds are permitted, there shall be a 200 yard minimum distance between boat blinds.

7. ~~A party shall only~~<sup>[8. On the Olmsted and Peal Units, a person shall not:]</sup>

a. ~~hunt waterfowl~~ <sup>[except]</sup> from a permanent department blind or layout blind(s) set in such a manner that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party; or

8. ~~A party shall only~~<sup>[within twenty-five (25) feet of department blinds if the area is under flood and only accessible by boat; or]</sup>

b. ~~hunt waterfowl~~ <sup>[except]</sup> from a blind site or within 200 yards of a blind site assigned by the department during the December and January segment of the waterfowl season<sup>[Canada Goose season]</sup>.

9. On the Peal unit:

a. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

b. More than four (4) parties shall not hunt at the same time on Fish Lake;

c. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

d. ~~A party shall not hunt waterfowl except from within twenty-five (25) feet of a blind site assigned by the department during December and January.~~

10. On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than a Canada Goose except from a blind or blind site assigned by the department and unless:

a. The season for these species is open; and

b. The season for Canada Goose is also open.

c. Except, that area open for hunting during the Canada goose season shall also be open during the Snow Goose Conservation Order without blind restrictions.

(4) Barkley Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of

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this administrative regulation.

(b) A person shall establish a permanent blind within ten (10) yards of his or her blind site within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and the TVA power transmission lines at river mile 55.5.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, a person shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) A waterfowl hunter:

1. May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

2. Shall not use a breech-loading firearm elsewhere on the area.

(6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(7) Miller Welch-Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 14.

(8) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:

(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(9) Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area. ~~[Addington Enterprises Wildlife Management Area shall be closed to waterfowl hunting.]~~

(10) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On Forked Lake, Indian Camp Lake, Fish Lake, Number Four Lake, and Black Lake, all waterfowl hunting after November 1:

1. Shall be from blind sites assigned by a random preseason draw.

2. Shall be within ten (10) yards of a blind site, even during periods of Mississippi River flooding.

(11) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:

(a) Within the no wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; and

(d) Within three-quarters (3/4) of a mile from the dam.

(12) Green River Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(13) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay; and

3. The eastern two-thirds (2/3) of Duncan Bay.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A waterfowl hunter shall remove decoys and personal effects daily.

(15) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(16) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(17) Ohio River Waterfowl Refuge.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

(18) Peabody Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:

1. Sinclair Mine, as bounded by Hwy 176, the haul road, and Goose Lake Road as posted by signs; and

2. Homestead, as bounded by Cool Spring-Wysox Road, H2 Road, H1 Road, and H6 Road, and areas posted by signs.

(19) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.

(20) Sloughs Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On the Grassy-Pond Powell's Lake Unit, a waterfowl hunter:

1. Shall use a permanent blind provided by the department;

2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily; and

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(d) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party; and

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;

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2. May occupy a blind not claimed by the permittee one (1) hour before sunrise;

3. Shall be limited to twenty-five (25) shells when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2);

4. Shall be limited to fifteen (15) shells when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2);

5. Shall be accompanied by an adult if under eighteen (18) years of age; and

6. The waterfowl blind for mobility-impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 through March 15.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(21) South Shore Wildlife Management Area.

(a) Closed to all hunting November 15 through January 30, except quota hunt waterfowl and dove hunting.

(b) The quota hunt requires advance application and selection.

(c) Hunters shall use department blinds.

(d) Department blinds are allocated by a preseason draw. Applicants shall mail a three (3) by five (5) white index card with hunter information in an envelope to Grayson Lake WMA post marked between November 1 and November 15.

~~(22) [Starfire Wildlife Management Area shall be closed to waterfowl hunting.~~

~~(23) Tylorsville Lake Wildlife Management Area. Shooting hours shall be thirty (30) minutes before sunrise until 2 p.m.~~

~~(23) [The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 through the last day of February, except for quota deer hunting, and the waters from the boat ramp to the Highway 248 bridge, which are open to fishing until November 15.~~

~~(24) Westvaco Wildlife Management Area.~~

~~(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.~~

~~(b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.~~

~~(25) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch shall be closed to all waterfowl hunting.~~

~~(24) [(26)] Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.~~

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard or Sauerheber Unit of Sloughs Wildlife Management Areas shall:

(a) Apply to the vendor supplied by the department by calling (877) 598-2401;

(b) Register between September 1 and September 30; and

(c) Pay a three (3) dollar application fee for each application.

(2) A person shall not apply more than one (1) time for each hunt.

(3) Each hunter drawn may bring up to three (3) additional hunters.

(4) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year [year's waterfowl quota hunts] if the hunter violates state or federal regulations while waterfowl hunting on WMAs in which hunter numbers are regulated as part of a preseason or daily drawing.

Section 7. State Parks. (1) There shall be no waterfowl hunting on state parks except as specified in the subsection (2) of this section.

(2) State Parks.

(a) There shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson [Grason] Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Paintsville [Paintsville] Lake, Pennyrite Lake, and Yatesville Lake State Parks.

(b) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days in which the park office is not open.

(c) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(d) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days in which the park office is not open.

(e) Statewide waterfowl hunting requirements apply.

Section 8. Mentor Waterfowl Hunts at Minor Clark and Peter W. Pfeiffer Fish Hatcheries. (1) There shall be youth waterfowl mentor hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.

(2) Dates shall be determined and published in the current Waterfowl Hunting Guide.

(3) Youths shall register in advance and carry postcard notification for the day of the hunt.

(4) Youths shall be accompanied by an adult eighteen (18) years or older.

(5) One (1) youth shall not be accompanied by more than one (1) adult.

(6) One (1) adult may accompany two (2) youths.

(7) Hunting shall only be permitted from established blinds and hunters shall not change blinds.

(8) Four (4) hunters shall be permitted per blind.

(9) Hunters may only discharge firearms from the blind.

(10) Hunters may only have fifteen (15) shotshells per hunter.

(11) Hunters shall immediately retrieve downed birds. Chasing or harassing waterfowl outside the blinds is strictly prohibited.

(12) Firearms shall be encased when traveling to and from the blind.

(13) Hunting shall end at noon and hunters shall be off the premises by 1 p.m.

(14) All decoys and equipment shall be removed at the end of each day's hunt.

(15) Hunters shall report harvest by dropping hunt permit at designated location.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: November 13, 2008

FILED WITH LRC: November 21, 2008 at 9 a.m.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2008–09 waterfowl hunting requirements in accordance with the USFWS and Kentucky Department of Fish and Wildlife Resources (KDFWR) management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates, bag limits and other hunting requirements on public lands managed for waterfowl and public hunting opportunity by KDFWR.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals

for this important natural resource.

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

(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing frameworks for waterfowl hunting seasons in the United States. This amendment reflects the federal mandate regulations for waterfowl hunting within the requirements of the Migratory Bird Treaty Act. Changes in the duck season dates are the result of the calendar shift on lands managed by Kentucky Department of Fish and Wildlife for public hunting. In 2008, the season on canvasback ducks will be closed, and the bag limit on scaup ducks will be reduced from two (2) to one (1) for the first forty (40) days of the duck season. The Canada goose season in the Pennyroyal, West-Central, and Eastern goose zones will receive twenty (20) additional days of hunting to be added to the December segment of the season. Changes in hunting requirements for Boatwright and Taylorsville WMA are consistent with department goal of providing more user opportunity consistent with the welfare of the state's waterfowl resource.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new of 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 current changes in season dates and/or bag limits will be published in the hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

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

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement 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 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public wetlands managed by KDFWR. KDFWR imposes more restrictive hunting regulations on these lands in effort to meet international waterfowl management objectives.

tives while still providing quality hunting opportunity consistent with waterfowl population objectives.

**STATEMENT OF EMERGENCY**  
**815 KAR 25:080E**

This emergency administrative regulation amends the process for establishing standards for certifying individuals engaged in the installation of manufactured and mobile homes. The General Assembly passed legislation in the 2008 session requiring certified installer seals to be placed on manufactured and mobile homes. The legislation, codified at KRS 227.570(4), takes effect January 1, 2009. This emergency administrative regulation will be replaced by an ordinary administrative regulation, and the ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
KRIEL MORAN, Chairman  
ROBERT D. VANCE, Secretary

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(Emergency Amendment)**

**815 KAR 25:080E. Requirements for certified installer seals and certification of[certifying] manufactured home installers.**

RELATES TO: KRS 227.550, 227.560(1), 227.570, 227.580(1), (3), 227.590, 227.600(3), 227.630, 227.990

STATUTORY AUTHORITY: KRS 227.570(2), 227.590(1), 227.570(4), EO 2008-507.

EFFECTIVE: December 15, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.570(2) requires the office to enforce standards of installation, adopted by the Manufactured Home Certification and Licensure Board, as it determines are reasonably necessary to protect public health and safety. KRS 227.590(1) requires the board to promulgate administrative regulations to establish the standards. KRS 227.570(4) requires the board to promulgate administrative regulations to establish standards for the certified installer seal program. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the requirements for certified installer seals and certification of[certifying] manufactured home installers.

Section 1. Definitions. (1) "Board" is defined in KRS 227.550(1).

(2) "Certified installer" means an individual certified to install manufactured homes in Kentucky pursuant to this administrative regulation.

(3) "Certified installer seal" means a seal indicating that a manufactured or mobile home has been installed by a person properly licensed as a certified installer pursuant to this administrative regulation.

(4)[(3)] "Installation" means the work performed on-site and the operations involved in the delivery, permanent securing, and placement of a manufactured home for the purpose of human occupancy, to:

- (a) Include the following:
  1. Preparation of a permanent foundation;
  2. Placement of polyvinyl covering on the ground, if applicable;
  3. The placement and connection of utilities performed by appropriately-licensed contractors;
  4. Anchoring and tying down; and
  5. Installation of other accessory or appurtenance specified in the sales contract; and
- (b) Exclude the following:

1. Site preparation; or
  2. For a single-section home, ground set after site preparation.
- (4)[(5)] "Office" is defined in KRS 227.550(11).
- (5) "Permanent foundation" means a system of supports:
- (a) Capable of transferring without failure, into soil or bedrock, the maximum design load imposed by or upon the structure;
  - (b) Constructed of concrete; and
  - (c) Placed at a depth below grade adequate to prevent frost damage.
- (5)[(6)] "Site preparation" means work performed on the land in preparation for installation of the home:
- (a) Including:
    1. Clearing and initial grading;
    2. Water drainage; and
    3. Vegetation control; and
  - (b) Excluding final grading after the home has been set.

Section 2. Requirements for Certification. (1) An applicant for certified installer shall:

- (a) Submit to the department[office] a completed Form MHCI 3;
- (b) Pay an application fee of \$100 to the department[office];
- (c) Successfully complete fifteen (15) hours of an approved course of education;
- (d) Provide written proof of regularly assisting in site preparation and installation functions:
  1. Under the supervision of a certified installer;
  2. For at least sixty (60) days; and
  3. On at least five (5) homes;
- (e) Pass the certified installer examination given by the department[office]; and
- (f) Provide a certificate verifying current worker's compensation insurance coverage, if the applicant is employed at the time of application.

(2) An installer certification shall be issued in the name of the individual qualified under subsection (1) of this section. The individual may request that the certificate also bear the name of the employing company.

(3) If the certified installer changes his business name or is no longer associated with the company whose name appears upon the certificate, the certified installer shall inform the office and request an amended certificate which shall reflect the current status. If the certified installer is no longer associated with a company, that company shall not hold itself out as a certified installer or having in its employ a certified installer until another certified person has become associated with that company.

Section 3. Renewal of Certification; Continuing Education. (1) The installer certificate shall expire on the last day of the installer's birth month. If an initial certificate is for a period of less than twelve (12) months, the fee shall be reduced on a pro rata monthly basis.

(2) A certified installer seeking to renew certification shall:

- (a) Submit a completed application, Form DHBCMH 40-21[MHCI-3], to the department[office];
- (b) Pay a renewal fee of fifty (50) dollars; and
- (c) Provide proof of at least five (5) classroom hours successfully completed during the year in a course offered by the Kentucky Manufactured Housing Institute.

Section 4. Minimum Requirements for Installations. A certified installer shall comply with KRS 227.570(3) by using the manufacturer's instructions or ANSI A225.1, Manufactured Home Installations.

Section 5. Certified Installer Seal. (1) A certified installer who installs a manufactured or mobile home in accordance with the standards set forth in this regulation shall place a certified installer seal on the home. Certified installer seals shall be obtained from the department. The application shall be:

- (a) Filed on Form DHBC MHCI 4; and
  - (b) Accompanied by a fee of twenty-five (25) dollars for each seal.
- (2) Recordkeeping. A certified installer shall:
- (a) Maintain the following information, reported monthly to the Division of Building Code Enforcement, Manufactured Housing

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Section, by regular U.S. Mail, facsimile or electronically, on Form DHBC MH 40-30, for each certified installation:

1. Unit serial number;
2. Certified installer seal number;
3. Date manufactured, if known;
4. Make of unit;
5. Installation date of unit; and
6. Name of consumer and address where the manufactured home is located.

(b) Retain the completed Form DHBC MH 40-30 for three (3) years; and

(c) Make a copy of the form available to a manufactured housing field inspector upon request.

(3) Application and placement of certified installer seals.

(a) Each certified installer seal consists of two parts which shall be affixed as follows:

1. One part shall be placed two (2) inches above the HUD label on the outside left corner of a manufactured home or on the outside left corner of a mobile home where no HUD label is required; and

2. One part shall be placed on the inside of the electrical panel in the manufactured home.

(b) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the certified installer seal.

(4) Lost or damaged seals.

(a) If a certified installer seal becomes lost or damaged, the owner shall notify the department immediately, in writing, specifying:

1. The manufacturer;
  2. The manufactured or mobile home serial number; and
  3. The certified installer seal number, if known
- (b) A damaged seal shall be:
1. Promptly returned to the department; and
  2. Replaced by the office at a cost of twenty-five (25) dollars.

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

(a) "ANSI A225.1, Manufactured Home Installations", 1994 Edition;[and]

(b) "Form MHCI 3, Certified Installer Application", September 2007;[and]

(c) "Form DHBC MH 40-29, Application For Certified Installer Seals", December 2008;

(d) "Form DHBC MH 40-21, Certified Installer Renewal Application", December 2008; and

(e) "Form DHBC MH 40-30, Monthly Certified Installer Certification", December 2008.

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

KREIL MORAN, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 4, 2008

FILED WITH LRC: December 15, 2008 at 8 a.m.

CONTACT PERSON: Michael D. Bennett, Staff Attorney, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 126, fax (502) 573-1057.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael D. Bennett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for certifying individuals engaged in the installation of manufactured and mobile homes.

(b) The necessity of this administrative regulation: The Manufactured Home Certification and Licensure Board are required to promulgate regulations to effectuate the provisions of KRS 227.550-KRS 227.660, including the certification of installers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute directs the Board to establish standards for the design, manufacture, installation and sale of new and used manufactured homes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards for the certification of installers as directed by statute. Applying the rules set forth in this regulation will enable the Department to effectively and efficiently regulate installers and the manufactured housing industry in the interest of the safety of the occupants of manufactured homes and the public.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the certified installer seal program.

(b) The necessity of the amendment to this administrative regulation: The General Assembly passed legislation in the 2008 session requiring certified installer seals. The legislation, codified at KRS 227.570(4), takes effect January 1, 2009, and this amendment is necessary to implement the statute.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.570(4), effective January 1, 2009, authorizes the promulgation of regulations in support of the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment enables the office to comply with legislation passed by the Kentucky General Assembly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect installers of manufactured homes. Purchasers and owners of manufactured homes will also be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities must comply with installation standards and guidelines as before. In addition, certified installers must leave a certified installer seal indicating the installation was performed by a certified installer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Certified Installer Seals will cost twenty-five dollars (\$25) each.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Owners of manufactured homes will know that their home has been set properly according to the applicable standards and that the installer has received the proper training and education, ensuring peace of mind for the homeowner.

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

(a) Initially: There should be no initial cost to implement this administrative regulation;

(b) On a continuing basis: Continuing costs such as the hiring of additional inspectors will be covered by the cost of the Certified Installer Seals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Manufactured Housing inspectors and employees of the Department of Housing, Buildings and Construction paid through agency funds will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment establishes a fee in the amount of twenty-five dollars (\$25), but no other increase in funding will be necessary to implement the amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The

amended regulation establishes a fee in the amount of twenty-five dollars (\$25) for each Certified Installer Seal.

(9) TIERING: Is tiering applied? Tiering was not applied as all certified installers are treated equally under this administrative regulation and amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Department of Housing, Buildings and Construction.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 227.570(4) (effective January 1, 2009) requires the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Exact revenues cannot be ascertained at this time, but the regulation will be fiscally neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Exact revenues cannot be ascertained at this time, but the regulation will be fiscally neutral.

(c) How much will it cost to administer this program for the first year? Exact costs cannot be ascertained at this time, but the regulation will be fiscally neutral.

(d) How much will it cost to administer this program for subsequent years? Exact costs cannot be ascertained at this time, but the regulation will be fiscally neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will be fiscally neutral.

STATEMENT OF EMERGENCY  
907 KAR 1:170E

This emergency administrative regulation is being promulgated to establish a new category of home and community based waiver service provider, a safety net provider, along with a corresponding enhanced reimbursement. This action must be taken on an emergency basis to protect the health, safety and welfare of HCB recipients by ensuring access to necessary care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation differs from this emergency administrative regulation as it does not contain the lump-sum payment provision established in Section 5 of this emergency administrative regulation. The lump-sum payment shall be paid under the authority of this emergency administrative regulation and duplication could potentially occur if the provision was also included in the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor  
JANIE MILLER, Secretary

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

907 KAR 1:170E. Reimbursement for home and community based waiver services.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: December 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by home and community based waiver service providers to an eligible recipient as an alternative to nursing facility care.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066, Section 4; and

(b) Certified for Medicaid participation by the department.

(3) "Cost report" means the Home Health and Home and Community Based Cost Report and the Home Health and Home and Community Based Cost Report Instructions.

(4) "DD" means developmentally disabled.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Fixed upper limit" means the maximum amount the department shall reimburse for a unit of service.

(7) "HCB" means home and community based waiver.

(8) "HCB recipient" means an individual who:

(a) Meets the criteria for a recipient as defined in KRS 205.8451; and

(b) Meets the criteria for HCB services as established in 907 KAR 1:160.

(9) "Level I" means a reimbursement rate paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient.

(10) "Level II" means a reimbursement rate of paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient, if the ADHC center meets the criteria established in Sections 5 and 6 of this administrative regulation.

(11) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(12) "Metropolitan Statistical Area" means the designation of an urban population center based on the national census and updated on a yearly basis as published by the United States Office of Management and Budget.

(13) "Nonprofit organization" means a legally constituted organization under the Internal Revenue Service code whose objective is to support or engage in activities of public or private interest without any commercial or monetary profit.

(14) "Occupational therapist" is defined by KRS 319A.010(3).

(15)[(43)] "Occupational therapist assistant" is defined by KRS 319A.010(4).

(16)[(44)] "Physical therapist" is defined by KRS 327.010(2).

(17)[(45)] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

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(18)(146) "Quality improvement organization" or QIOs defined in 42 C.F.R. 475.101.

(19) "Revenue code service" means:

(a) An assessment, reassessment, homemaking, personal care, respite, or attendant care service; or

(b) A minor home adaptation.

(20) "Safety net provider" means a provider which:

(a) Provides 100,000 or more units of revenue code services per year;

(b) Provides revenue code services in an area that is not a Metropolitan Statistical Area of the Commonwealth; and

(c) Is a nonprofit organization.

(21)(147) "Speech-language pathologist" is defined by KRS 334A.020(3).

Section 2. HCB Service Reimbursement. (1) Except as provided in Section 3, 4, or 5[3-or-4] of this administrative regulation, the department shall reimburse for a home and community based waiver service provided in accordance with 907 KAR 1:160 at the lesser[lessor] of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits:

Home and Community Based Waiver Service	Fixed Upper Payment Rate Limit	Unit of Service
Assessment	\$100.00	Entire assessment process
Reassessment	\$100.00	Entire reassessment process
Case Management	\$15.00	15 minutes
Homemaking	\$13.00	30 minutes
Personal Care	\$15.00	30 minutes
Attendant Care	\$11.50	1 hour (not to exceed 45 hours per week)
Respite	\$2,000 per 6 months (January 1 through June 30 and July 1 through December 31, not to exceed \$4,000 per calendar year)	1 hour
Minor Home Adaptation	\$500 per calendar year	

(2) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

(3) A homemaking service shall be limited to no more than four (4) units per week per HCB recipient.

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

(a) Pursuant to Section 2 of this administrative regulation; and

(b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall submit a cost report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual cost report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual cost report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's cost report if it determines an audit is necessary.

Section 4. Safety Net Provider Standard Reimbursement. (1) The department shall reimburse for a revenue code service provided by a safety net provider a rate equal to the median rate of all local health departments for the revenue code service.

(2) The median rate referenced in subsection (1) of this section shall be the median rate subsequent to any supplemental payment pursuant to Section 3(4) or recoupment pursuant to Section 3(5) of this administrative regulation.

Section 5. Safety Net Provider Lump Sum Payment. (1) The department shall make a one (1) time lump sum payment to a safety net provider equal to what reimbursement would have been at the safety net provider rate established in Section 4(1) of this administrative regulation for a revenue code service provided from July 1, 2008, had the rate been effective July 1, 2008, until the effective date of this emergency administrative regulation minus what the department has already paid or owes (via the pre-safety net provider reimbursement) the provider for services provided from July 1, 2008 until the effective date of this emergency administrative regulation.

Section 6. Reimbursement for an ADHC Service. (1) Reimbursement shall:

(a) Be made:

1. Directly to an ADHC center; and

2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 120 units per calendar week at each HCB recipient's initial review or recertification.

(2) Level I reimbursement shall be the lesser of the provider's usual and customary charges or two (2) dollars and fifty-seven (57) cents per unit of service.

(3) Level II reimbursement shall be the lesser of the provider's usual and customary charges or three (3) dollars and twelve (12) cents per unit of service.

(4) The department shall not reimburse an ADHC center for more than twenty-four (24) basic units of service per day per HCB recipient.

(5) An ADHC basic daily service shall:

(a) Constitute care for one (1) HCB recipient; and

(b) Not exceed twenty-four (24) units per day.

(6) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(7) An ADHC center may request a Level II reimbursement rate for an HCB recipient if the ADHC center meets the following criteria:

(a) The ADHC center has an average daily census limited to individuals designated as:

1. HCB recipients;

2. Private pay; or

3. Covered by insurance; and

(b) The ADHC center has a minimum of eighty (80) percent of its individuals meeting the requirements for DD as established in Section 5(2) of this administrative regulation.

(8) If an ADHC center does not meet the Level II requirements established in Section 5 of this administrative regulation, the ADHC center shall be reimbursed at a Level I payment rate for the quarter for which the ADHC center requested Level II reimbursement.

(9) To qualify for Level II reimbursement, an ADHC center that was not a Medicaid provider before July 1, 2000 shall:

(a) Have an average daily census of at least twenty (20) individuals who meet the criteria established in subsection (2)(a) of this section; and



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(b) Have a minimum of eighty (80) percent of its individuals meet the description of DD as established in Section 5(2) of this administrative regulation.

(10) To qualify for reimbursement as an ancillary therapy, a service shall be:

- (a) Medically necessary;
- (b) Ordered by a physician; and
- (c) Limited to:

1. Physical therapy provided by a physical therapist or physical therapist assistant;

2. Occupational therapy provided by an occupational therapist or occupational therapist assistant; or

3. Speech therapy provided by a speech-language pathologist.

(11) Ancillary therapy service reimbursement shall be:

(a) Per HCB recipient per encounter; and

(b) The usual and customary charges not to exceed the Medicaid upper limit of seventy-five (75) dollars per encounter per HCB recipient.

(12) A respite service shall:

- (a) Be provided on site in an ADHC center; and
- (b) Be provided pursuant to 907 KAR 1:160.

(13) One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes.

(14) The length of time an HCB recipient receives a respite service shall be documented.

(15) A covered respite service shall be reimbursed as established in Section 2 of this administrative regulation.

Section 7[5-] Criteria for DD ADHC Level II Reimbursement. To qualify for Level II reimbursement:

(1) An ADHC center shall meet the requirements established in Section 4 of this administrative regulation; and

(2) Eighty (80) percent of its ADHC service individuals shall have:

(a) A substantial disability that shall have manifested itself before the individual reaches twenty-two (22) years of age;

(b) A disability that is attributable to mental retardation or a related condition which shall include:

- 1. Cerebral palsy;
- 2. Epilepsy;
- 3. Autism; or

4. A neurological condition that results in impairment of general intellectual functioning or adaptive behavior, such as mental retardation, which significantly limits the individual in two (2) or more of the following skill areas:

- a. Communication;
- b. Self-care;
- c. Home-living;
- d. Social skills;
- e. Community use;
- f. Self direction;
- g. Health and safety;
- h. Functional academics;
- i. Leisure; or
- j. Work; and

(c) An adaptive behavior limitation similar to that of a person with mental retardation, including:

1. A limitation that directly results from or is significantly influenced by substantial cognitive deficits; and

2. A limitation that is not attributable to only a physical or sensory impairment or mental illness.

Section 8[6-] The Assessment Process for Level II ADHC Reimbursement. (1) To apply for Level II ADHC reimbursement, an ADHC center shall contact the QIO on the first of the month prior to the end of the current calendar quarter. If the first of the month is on a weekend or holiday, the ADHC center shall contact the QIO the next business day.

(2) The QIO shall be responsible for randomly determining the date each quarter for conducting a Level II assessment of an ADHC center.

(3) In order for an ADHC center to receive Level II reimbursement:

(a) An ADHC center shall:

1. Document on a MAP-1021 form that it meets the Level II reimbursement criteria established in Section 5 of this administrative regulation;

2. Submit the completed MAP-1021 form to the QIO via facsimile or mail no later than ten (10) working days prior to the end of the current calendar quarter in order to be approved for Level II reimbursement for the following calendar quarter; and

3. Attach to the MAP-1021 form a completed and signed copy of the "Adult Day Health Care Attending Physician Statement" for each individual listed on the MAP-1021 form;

(b) The QIO shall review the MAP-1021 form submitted by the ADHC center and determine if the ADHC center qualifies for Level II reimbursement; and

(c) The department shall review a sample of the ADHC center's Level II assessments and validate the QIO's determination.

(4) If the department invalidates an ADHC center Level II reimbursement assessment, the department shall:

(a) Reduce the ADHC center's current rate to the Level I rate; and

(b) Recoup any overpayment made to the ADHC center.

(5) If an ADHC center disagrees with an invalidation of a Level II reimbursement determination, the ADHC center may appeal in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9[7-] Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 10[9-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Map-1021, ADHC Payment Determination Form", August 2000 Edition;

(b) "Adult Day Health Care Attending Physician Statement", August 2000 Edition;

(c) "The Home Health and Home and Community Based Cost Report", November 2007 Edition; and

(d) "The Home Health and Home and Community Based Cost Report Instructions", November 2007 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH JOHNSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 1, 2008

FILED WITH LRC: December 2, 2008 at 4 p.m.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Ked Fitzpatrick (502) 564-8196

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to home and community based (HCB) waiver service reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to home and community based (HCB) waiver service reimbursement.

(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 provisions related to home and community based (HCB) waiver service reimbursement

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to home and community based (HCB) waiver service reimbursement.

(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 establishes a new category of service

provider, safety net provider, along with a corresponding enhanced reimbursement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure adequate access to services for rural HCB service recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring adequate access to services for HCB recipients in rural areas.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring adequate access to services for HCB recipients in rural area.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services anticipates that one (1) entity will qualify as a safety net provider.

(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 amendment establishes a new category of service provider, safety net provider, along with a corresponding enhanced reimbursement and does not require provider compliance action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Reimbursement is enhanced for a safety net provider which in turn also ensures access to services for HCB recipients in rural areas.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendment will cost approximately \$500,000 (\$350,000 federal funds and \$150,000 state funds) annually.

(b) On a continuing basis: DMS anticipates that the amendment will cost approximately \$500,000 (\$350,000 federal funds and \$150,000 state funds) annually.

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

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

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

(9) Tiering: Is tiering applied? Tiering is applied in that an entity must qualify as a safety net provider to receive the new enhanced reimbursement. A safety net provider's viability is necessary to promote adequate access to HCB services for recipients located in rural areas.

#### 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 Medicaid Services anticipates that it, a state government entity, will

be impacted in that the amendment is projected to cost approximately \$500,000 (\$350,000 federal funds/\$150,000 state funds) annually.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.030(2), 194A.050(1) and 205.520(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.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. DMS does not expect the amendment to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS anticipates that the amendment will cost approximately \$500,000 (\$350,000 federal funds and \$150,000 state funds) annually.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendment will cost approximately \$500,000 (\$350,000 federal funds and \$150,000 state funds) annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Expenditures:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

GOVERNOR'S OFFICE  
Kentucky Department of Veterans Affairs  
Office of the Commissioner  
(As Amended at ARRS, December 9, 2008)

**17 KAR 4:020. Indigent Veterans' Burial Program.**

RELATES TO: KRS 40.355, 40.357, 38 U.S.C. 101(2)

STATUTORY AUTHORITY: KRS 40.357(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.357(1) directs the Kentucky Department of Veterans Affairs (KDVA) to promulgate administrative regulations to implement the Indigent Veterans' Burial Program. This administrative regulation establishes rules to operate this program, including oversight by this department and required eligibility criteria applicable before state funds shall~~may~~ be used to defray funeral costs.

Section 1. Eligibility Criteria under KRS 40.355. To be eligible for state funds to defray the costs of funeral expenses for burial in a~~any~~ cemetery in Kentucky, private or public, the following requirements shall~~must~~ be met:

(1) The deceased shall be a veteran as defined by 38 U.S.C. 101(2)~~in 38 U.S.C. Service, Section 101, meaning "a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable,"~~ and as verified by discharge records; and who:

(2) The deceased shall have died in Kentucky;~~and~~

(3) The deceased shall have been~~Was~~ indigent at the time of death, meaning:

(a)~~[a.]~~ The deceased's estate did not possess~~possessed no~~ money or other assets to pay for or defray the costs of the deceased's funeral;~~and~~

(b)~~[b.]~~ There was not a~~no other~~ person obligated by law to pay for the funeral expenses of the deceased; and

(c)~~[c.]~~ After diligent efforts, there was not a~~no~~ funeral home, cemetery, veteran service organization, or any entity that ~~that~~ was able to obtain funds to pay funeral expenses from another~~any other~~ private or public source;

(4) Priority shall be given to an indigent veteran~~indigent veterans~~ whose records indicate that the veteran~~they~~ had established Kentucky residency prior to death so that General Funds expended to defray funeral costs shall be used for the citizens of Kentucky first;~~and~~

(5) The following records may be used to establish state residency:

(a) Military service records, such as a DD Form 214;

(b)~~[.]~~ The deceased's driver's license; or

(c) Another official record~~any other official records~~ clearly showing the deceased was a Kentucky resident.

Section 2. Reimbursement. The amount of reimbursement authorized is limited as follows:

(1) Except as provided by subsection (2) of this section, the department shall reimburse a cemetery or funeral home its costs for burying an indigent veteran.

(2) The maximum amount reimbursed shall not exceed \$1,000 per indigent veteran.

Section 3. Application Process. (1) To request state funds to defray the funeral costs of an eligible indigent veteran, each funeral home, cemetery, veterans service organization, private citizen, or other entity shall submit an Indigent Veteran Burial Application, designated as KDVA Form 6~~incorporated by reference in Section 4 of this administrative regulation~~.

(2) State and federal veterans cemetery priority. Each funeral home, cemetery, veteran service organization, or other~~any~~ entity seeking defrayment of burial costs shall first seek~~use due dili-~~

~~gence in seeking~~ burial of the indigent veteran in a state or federal veterans cemetery before considering burial in another~~any other~~ cemetery.

Section 4. Approval Process. (1) The final decision to approve an Indigent Burial Application shall be made by the Commissioner, Kentucky Department of Veterans Affairs.

(2) In the absence of the commissioner, approval authority shall be delegated to the deputy commissioner or, in the absence of both the commissioner and the deputy commissioner, approval authority shall be delegated~~The Commissioner may delegate the approval authority to the Deputy Commissioner or~~ to the staff assistant in charge of Kentucky Veterans Cemeteries.

(3) The approval authority shall decide whether the deceased meets the eligibility criteria established in this administrative regulation~~stated above~~, and, if so, shall approve funds to defray burial costs~~subject to the limits stated above~~.

Section 5. Incorporation by Reference. (1) "Indigent Veteran Burial Application", KDVA Form 6", January 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LESLIE E. BEAVERS, Commissioner

APPROVED BY AGENCY: September 25, 2008

FILED WITH LRC: September 25, 2008 at 1 p.m.

CONTACT PERSON: Jeff Acob, Staff Assistant in charge of Kentucky Veterans Cemeteries, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, December 9, 2008)

**105 KAR 1:140. Contribution reporting.**

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 26 U.S.C. 401(a)(17), 26 U.S.C. 401(a)(17)(B), 26 U.S.C. 401(a)(31), 26 U.S.C. 403(b), 26 U.S.C. 408(a), (b), 26 U.S.C. 414 (g)(6), 26 U.S.C. 457(b).

STATUTORY AUTHORITY: KRS ~~[61.560,]~~ 61.645(9)~~(g)(f),~~ 61.675, 61.685, 78.545(24), 78.610, 78.615]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required to report creditable compensation and contributions to the retirement systems and other information that the Board of Trustees may require. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall report the creditable compensation and contributions of its employees at least once per month on the Form 3, Summary of Wages Earned, or by diskette or tape in the electronic format "KRSPAY" or other electronic format acceptable to the retirement system. Each employer who re-

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

ports on diskette or tape may report on a semimonthly basis. Each employer shall report only the creditable compensation earned during the period for which the report is prepared and shall report only the employee and employer contributions on the basis of this creditable compensation.

(2) Creditable compensation for a lump-sum bonus, severance pay, or an employer-provided payment for purchase of service credit shall be made in accordance with the provisions of KRS 16.505(8), 61.510(13), or 78.510(13). Total service shall include all service credit earned as of the date of the report or purchase.

(3)(a) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(b) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these[such] rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(c) Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B) shall[may] not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include[means] compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply[applies] to annual compensation for the determination period that begins with or within the[such] calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be[is] an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this[such] prior determination period shall be[is] subject to the applicable annual compensation limit in effect for that prior period.

(d) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

1. The member's creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

2. The member has filed a notification of retirement; and

3. The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003, [whose creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002, and who has filed a notification of retirement may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if the excess creditable compensation is within the maximum annual compensation limit applicable in 2002-

2003.] Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 2. If creditable compensation in excess of actual compensation is reported, the employer shall request a refund of the excess employer and employee contributions. The retirement system shall remit the excess employer and employee contributions to the employer in the form of checks made payable to the employer. The employer shall distribute the employee's contributions to the employee if the amount is due the employee after making payroll deductions in accordance with federal and state law.

Section 3. If creditable compensation is reported that is less than actual creditable compensation paid to the employee by the employer, the employer shall report the deficiency by pay period to the retirement system along with the employer and employee contributions owed as a result of the deficiency. The employer may report the additional creditable compensation by letter or other form which shall include:

(1) The Social Security number, name, and gross creditable compensation of the employee by pay period.

(2) The total employer and employee contributions required on the additional creditable compensation and the computation of both amounts.

(3) The signature of the individual authorized by the agency to report contributions to the retirement system.

Section 4. If an expense allowance is paid to a county official by the state, the state shall withhold the employee contributions applicable to the amount and remit it to the retirement system on behalf of the county. The county shall report the employer contributions on the Form 3-E, Expense Allowances Quarterly Report.

Section 5. An employer may change the name or address of an employee by submitting a letter or personnel document effecting the change signed by a personnel or payroll official.

Section 6. Upon request, each employer shall provide to the retirement system information relating to all employee wages, employment status, or other employment related information using Form 3, "Summary of Wages Earned" and Form 3-E, "Expense Allowances Quarterly Report." ~~Each employer shall provide to the retirement system, upon request and in the form prescribed by the retirement system, information relating to all employee wages, employment status or other employment related information.] Upon request, each employer shall make all relevant records related to its employees available to the retirement system during regular working hours.~~

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

(a) "Form 3, Summary of Wages Earned, June 1991", Kentucky Retirement Systems; and

(b) "Form 3-E, Expense Allowances Quarterly Report, July 1991", 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: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

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.

FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, December 9, 2008)

105 KAR 1:345. Rollovers and transfers of contributions to other plans.

RELATES TO: KRS 16.510-16.652, 61.515-61.705, 78.520-78.852, 26 U.S.C. secs. 401(a)(31), 402(c), 408(d)(3)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. This administrative regulation establishes what constitutes eligible rollover distributions, eligible retirement plans, distributions, distributees, and direct rollovers for purposes of compliance with 26 U.S.C. 401(a). For purposes of compliance with 26 U.S.C. 401(a)(31), this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.]

Section 1. **"Eligible rollover distribution" shall include any distribution of all or any portion of the balance to the credit of the distributee, except:**

**(1) Any distribution that is one of a series of substantially equal periodic payments made at least annually:**

**(a) For the life or life expectancy of the distributee and the distributee's designated beneficiary;**

**(b) The joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary; or**

**(c) For a specified period of ten years or more;**

**(2) Any distribution to the extent the distribution is required under 26 U.S.C. 401(a)(9), except as provided in Section 2 of this administrative regulation;**

**(3) The portion of any distribution that is not includable in gross income; and**

**(4) Any other distribution that is reasonably expected to total less than \$200 during the year.** [(4) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is:

(a) One of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent such distribution is required under 26 U.S.C. 401(a)(9);

(c) The portion of any distribution that is not includable in gross income; and

(d) Any other distribution that is reasonably expected to total less than \$200 during the year.]

Section 2. (1) **Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, this portion may be transferred:**

**(a) Only to:**

**1. An individual retirement account or annuity described in 26 U.S.C. 408 (a) or (b);**

**2. A qualified defined contribution plan described in 26 U.S.C. 401(a);**

**3. On or after January 1, 2007, a qualified defined benefit plan described in 26 U.S.C. 401(a); or**

**4. An annuity contract described in 26 U.S.C. 403(b); and**

**(b) An account or plan provided for in Section 2(1)2.-4. of this administrative regulation that agrees to separately account for amounts so transferred, and earnings on those**

**amounts, including separately accounting for the portion of the distribution:**

**1. That is includable in gross income; and**

**2. That is not so includable.**

**(2) Effective January 1, 2002, the definition of eligible rollover distribution shall also include a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).**

**(3)** [Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution plan described in 26 U.S.C. 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in 26 U.S.C. 401(a) or to an annuity contract described in 26 U.S.C. 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).

**(2)**] "Eligible retirement plan" **shall include** [means] any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in 26 U.S.C. 408(a);

(b) An individual retirement annuity described in 26 U.S.C. 408(b);

(c) An annuity plan described in 26 U.S.C. 403(a);

(d) A qualified trust described in 26 U.S.C. 401(a);

(e) Effective January 1, 2002, an annuity contract described in 26 U.S.C. 403(b),

(f) Effective January 1, 2002, a plan eligible under 26 U.S.C. 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or

(g) Effective January 1, 2008, a Roth IRA described in 26 U.S.C. 408A.

**(4)** [(3)] (a) "Distributee" **shall include an employee or former employee and the following:**

**1. The employee's or former employee's surviving spouse; and**

**2. The employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in 26 U.S.C. 414(p).**

**(b) Effective January 1, 2007, a "distributee" shall also include a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S.C. 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an inherited individual retirement account or annuity.**

**(c)** [means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S.C. 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

**(b)**] "Direct rollover" **shall include** [means] a payment by the plan to the eligible retirement plan specified by the distributee.

RANDY OVERSTREET, CHAIR

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

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.

### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, December 9, 2008)

#### 105 KAR 1:380. Minimum distribution.

RELATES TO: KRS 61.645(9)(g), 26 C.F.R. 1.401(a)(9)-1-1.401(a)(9)-9, [1.401(a)(9)-0-1.401(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) requires[authorizes] the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(9)(g) and this administrative regulation implement the statutory requirements of IRC Section 401(a)(9), which is codified as 26 U.S.C. 401(a)(9), and are meant to be a reasonable good faith interpretation of those statutory requirements. 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.

(2) "Member" means a member of a retirement fund established in accordance with KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, and administered by the Kentucky Retirement Systems.

(2) [(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 in accordance with KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.

(2) Kentucky Retirement Systems shall pay all benefits in accordance with a good faith interpretation of the requirements of 26 U.S.C. 401(a)(9) and the Code of Federal Regulations in effect under that section, as applicable to a governmental plan within the meaning of 26 U.S.C. 414(d). The requirements of 26 U.S.C. 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.

(3) The member's entire interest shall be distributed over the member's life or lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. [All distributions required pursuant to this administrative regulation shall be determined and made in accordance with treasury regulations established in 26 C.F.R. 1.401(a)(9)-0-1.401(a)(9)-9.]

Section 3. (1) Except as provided in subsection (2) of this section, 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) Except as provided in subsection (3) of this section[paragraph (d) of this subsection], if the member's surviving spouse is the member's sole designated beneficiary, distributions to the surviving spouse shall begin by the later of:

1. December 31 of the calendar year immediately following the calendar year in which the member died; or

2. December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2);

(b) If the member's surviving spouse is not the member's sole designated beneficiary, distributions to each designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died; or

(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. [; or]

(3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest shall be distributed at least as rapidly as under the method of distribution before the member's death. [(d) 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, paragraphs (b) and (c) of this subsection shall apply as if the surviving spouse were the member and paragraph (a) of this subsection shall not apply.]

(4) [(3)] (a) For purposes of Section 3(2) to (3) and Section 6[subsections 2 through 6][subsection (2)(a) through (c) of this section and Section 5] of this administrative regulation, distributions shall be required[considered] to begin on the member's required beginning date.

(b) [If subsection (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 pursuant to subsection (2)(a) of this section.

(c) 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 pursuant to subsection (2)(a) of this section, the date distributions are considered to begin shall be the date distributions actually commence.

Section 4. (1) If the member's interest is paid in the form of annuity distributions, payments pursuant to the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in monthly 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 this section o Section 5 or 6[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 pursuant to 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 this section 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)(a) 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 pursuant to Section 3(2) of this administrative regulation, shall be the payment that is required for one (1) month.

(b) 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.

(c) 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.

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Section 5. (1) The amount of annuity paid to a member's beneficiary shall[~~may~~] not exceed the maximum determined under the incidental death benefit requirement of 26 U.S.C. 401(a)(9)(G), and the minimum distribution incidental benefit rule under 26 C.F.R. 1.401(a)(9)-6, Q&A-2.

(2) The death and disability benefits provided by Kentucky Retirement systems shall be[are] limited by the incidental benefit rule set forth in 26 U.S.C. 401(a)(9)(g) and 1.401-1(b)(1)(i) or any successor law[regulation thereto]. As a result, the total death or disability benefits payable shall[~~may~~] not exceed twenty-five (25) percent of the cost of all of the members' benefits received from Kentucky Retirement Systems. (a) 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 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 26 C.F.R. 1.401(a)(9)-6.

(b) 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 paragraph (a) of this subsection shall apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.]

(3)(2)(a) 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 pursuant to the uniform lifetime table established in 26 C.F.R. 1.401(a)(9)-9 for the calendar year that contains the annuity starting date.

(b) If the annuity starting date precedes the year in which the member reaches age seventy (70), the applicable distribution period for the member shall be the distribution period for age seventy (70) under the uniform lifetime table established in 26 C.F.R. 1.401(a)(9)-9 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.

(4)(c) 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 pursuant to this subsection, or the joint life and last survivor expectancy of the member and the member's spouse as determined pursuant to the joint and last survivor table established in 26 C.F.R. 1.401(a)(9)-9, 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 the member's interest begins and there is a designated beneficiary, the entire interest payable to the member shall be distributed, beginning no later than the time established in Section 3(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[the member's] 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, 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 3(2)(a) of this administrative regulation.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

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### KENTUCKY RETIREMENT SYSTEMS Finance and Administration Cabinet Kentucky Retirement Systems (As Amended at ARRS, December 9, 2008)

#### 105 KAR 1:390. Employment after retirement.

RELATES TO: KRS 16.505(15), 61.510, 61.637, 78.510(3), (18), 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires[authorizes] the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. This administrative regulation concerns the administration of KRS 61.637 in ~~conjunction~~[conjunction] with federal law regarding bona fide separation from service and changes in employment relationship if a member returns to employment with a Kentucky Retirement Systems participating employer after retirement[~~whether in a Kentucky Retirement Systems Covered position or a noncovered position~~]. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations[~~statutes and regulations~~] (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax-qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions. (1) "Initial retirement date" means the member's effective retirement date as defined in KRS 61.590(5).

~~(2) "Reemployed" for purposes of this administrative regulation and KRS 61.637 does not include a transfer to another position with the same employer.~~

~~(3) "Participating employer" means an employer that participates in one of the systems administered by Kentucky Retirement Systems.~~

Section 2. "Reemployed", for purposes of this administrative regulation, shall not include a transfer to another position with the same employer.

Section 3. (1) Returning to work in a participating position. A retired member who is reemployed in a participating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section shall include[means] a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that the member will return to work for any participating employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for any par-

participating employer as a leased employee.[at the time of member's retirement between the member and any participating employer to return to work for any participating employer in any capacity including an agreement to return as a leased employee.]

(3) "Break in service" as provided in this section **shall require that[requires]:**

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(b) A member who retired from a nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(c) A member who retired from a hazardous or a non-hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a non-hazardous participating position.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with any participating employer, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

Section 4.~~[3.]~~ (1) Returning to work for a participating employer in a nonparticipating position. A retired member who is employed by a participating employer in a non-participating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section;~~;~~ and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and the member's last employer without a prearranged agreement **when the member retires that the member will return to work for the member's last employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for the member's last employer as a leased employee.**~~[between the member's last employer and the member at the time of retirement to return to work for the member's last employer in any capacity after the member's retirement including an agreement to return as a leased employee.]~~

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System **shall be[are]** treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), **shall[will]** be treated as a separate employer.

(3) "Break in service" as provided in this section **shall require that a member who retired from a hazardous or nonhazardous position and becomes employed in a nonparticipating hazardous or nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer[requires]:**

(a) A member who retired from a hazardous position and becomes employed in a nonparticipating hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed in a nonparticipating hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a hazardous or nonhazardous position and becomes employed in a nonparticipating non-hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.]

Section 5.~~[4.]~~ (1) Returning to work with the same employer in a position required to participate in a ~~a~~[different] retirement system. A retired member who is reemployed in a position required to participate in a different retirement system **not administered by Ken-**

**tucky Retirement Systems**[than that from which the retired member is receiving a monthly retirement allowance] shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and a participating employer without a prearranged agreement **when the member retires that the member will return to work for the same employer in any capacity. "Bona fide separation from service" shall also exclude a prearranged agreement to return to work for the same employer as a leased employee.**~~[to return to work between the same employer and the member in any capacity at the time of the member's retirement, including an agreement to return as a leased employee.]~~

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System **shall be[are]** treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), **shall[will]** be treated as a separate employer.

(3) "Break in service" as provided in this section **shall require that[requires]:**

(a) A member who retired from a hazardous position and becomes employed by the same employer in a hazardous position **required to participate in a**~~a~~[different] retirement system **not administered by Kentucky Retirement Systems**~~[than the system from which the retired member is receiving a monthly retirement allowance]~~, shall have a one (1) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed by the same employer in a ~~a~~[participating] hazardous position **required to participate in a retirement system not administered by Kentucky Retirement Systems**~~[in a different retirement system than the system from which the retired member is receiving a monthly retirement allowance]~~, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a nonhazardous~~or hazardous~~ position and becomes employed by the same employer in a participating non-hazardous or hazardous position in a ~~a~~[different] retirement system **not administered by Kentucky Retirement Systems**~~[than the system from which the retired member is receiving his monthly retirement allowance]~~, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with the same employer in a position required to participate in a ~~a~~[different] retirement system **not administered by Kentucky Retirement Systems** ~~[than the system from which the retired member is receiving a monthly retirement allowance]~~, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

Section 6.~~[5.]~~ (1) Returning to work for a different participating employer in a non-participating position. A retired member who becomes employed in a non-participating position shall not be required to have a bona fide separation from service if the retired member becomes employed with a different participating employer than the retired member's employer prior to retirement.

(2) A retired member who becomes employed in a non-participating position shall have a three (3) calendar month break in service.

(3) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System **shall be [are]** treated as the same participating employer.

(4) For purposes of this section, for County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), **shall be** treated as a separate employer.



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Section 7.[6:] (1) Requirements before employment after retirement. The retired member and the reemploying employer shall certify that **when the member retired**, there was no prearranged agreement to employ the retired member after the [retired] member's retirement. The retired member and reemploying employer shall complete and file at the retirement office the Form 6751, Retired Member and Employer Certification Regarding Reemployment.

(2) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with any participating employer. [Bona fide separation from service" means a cessation of the employment relationship between the member and the member's employer without a prearranged agreement between the participating employer and the member upon retirement to return to work for the participating employer after retirement in any capacity, including an agreement to return as a leased employee.]

(2) "Covered Position" means a position required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(3) "Noncovered Position" means a position not required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(4) "Normal retirement age" means:

(a) Age sixty-five (65) for a nonhazardous member, in accordance with KRS 61.510(18), and 78.510(18); or

(b) Age fifty-five (55) for a hazardous member as defined in KRS 16.505(15).

Section 2. Requirements for Commencing a Retirement Benefit. (1)(a) For purposes of commencing a retirement benefit, a member shall terminate employment with the participating employer and shall have a bona fide separation from service, except as provided in Section 9 of this administrative regulation.

(b) A prearranged agreement to be reemployed as a leased employee or as an independent shall be evaluated by the Kentucky Retirement Systems to determine if there is a continuing employment relationship.

(2)(a) In order to show compliance with this administrative regulation, the retiring member and the member's last employer shall certify upon application for a retirement benefit that a prearranged agreement to reemploy the retiring member has not been made.

(b) The member and the member's last employer shall complete and file at the retirement office the Form 6751, Member and Employer Certification Regarding Reemployment.

(c) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with the same employer from which the member retired or with an employer that participates in the retirement system from which the member retired.

(d) The retirement office shall not process a monthly retirement allowance until the member has filed the Form 6751, Member and Employer Certification Regarding Reemployment, at the retirement office.

Section 3. The Same Employer for Purposes of KERS and SPRS. For purposes of applying KRS 61.637, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.

Section 4. The Same Employer for Purposes of CERS. For purposes of applying KRS 61.637, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.

Section 5. Returning to work with the same participating employer. (1) Returning to work in a covered position in the same retirement system without a break in service or a bona fide separation from service.

(a) If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, except as provided in Section 9 of this administrative regulation, and returns to work with the same participating employer, in a

covered position in the same retirement system, the member's retirement shall be voided.

(b) The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(2) Returning to work in a covered position in a different retirement system.

(a)1. If the member does not have a bona fide separation from service, except as provided in Section 9 of this administrative regulation, and returns to work with the same participating employer in a covered position in a different retirement system, the member's retirement shall be voided.

2. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(b)1. If a member does have a bona fide separation from service (unless a bona fide separation from service is not required by Section 9 of this administrative regulation) and returns to work with the same participating employer in a covered position in a different retirement system and if the member does not have a one (1) calendar month break in service, the member's benefit shall be suspended for the first month of the member's reemployment.

2. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the month.

(3)(a) Returning to work in a noncovered position. If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, and returns to work with the same participating employer, in a noncovered position in any of the systems administered by Kentucky Retirement System, the member's retirement benefit shall be suspended for the duration of the employment.

(b) If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.

(4)(a) Returning to work with the same principal duties. If the member has a one (1) calendar month break in service and if there was a bona fide separation from service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with the same principal duties, the member's retirement benefit shall be suspended for a period beginning on the first of the month of the reemployment and ending on the first of the month following six (6) months from the member's first employment termination date, unless the member had reached normal retirement age at the time of employment termination.

(b) If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.

(5) Returning to work with different principal duties. If the member has a one (1) calendar month break in service and if there was a Bona Fide Separation from Service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with different principal duties, the member's retirement benefit shall continue unaffected.

Section 6. Returning to Work for a Different Participating Employer. (1) bona fide separation from service not required.

(a) If the member returns to work in any position, whether covered or noncovered, with a different participating employer than the member's last employer prior to retirement, a bona fide separation from service shall not be required.

(b) The requirement that there be at least a one (1) month break in service shall be applicable as established in subsection (5) of this section and in KRS 61.637.

(2) Returning to work in the same retirement system with a break in service. If the member has a one (1) calendar month break in service, and the member returns to work with a different participating employer in the same retirement system from which

the member retired, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.

(3)(a) Returning to work in a covered position in the same retirement system without a break in service. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in a covered position in the same retirement system from which the member retired, the member's retirement shall be voided.

(b) The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

(4) Returning to work in a noncovered position in the same retirement system without a break in service. If a member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in the same retirement system in a noncovered position the member's retirement benefit shall continue unaffected.

(5) Returning to work in a different retirement system. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in a different retirement system, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.]

Section 8.[7.] Status as an Employee. (1) A retired member and a Kentucky Retirement Systems participating employer shall file written notice at the retirement office if the retired member has accepted employment with the participating employer under a personal services contract.

(2) If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor, the retired member shall be subject to Sections 1 through 5[and 6] of this administrative regulation.

(3) Kentucky Retirement Systems shall take appropriate action to determine the individual's status as an independent contractor or employee.

Section 9.[8.] Leased Employees. (1) A retired member and a participating employer shall file at the retirement office written notice if the retired member is performing work for the participating employer through a private leasing company, a temporary staffing agency, or any other company.

(2) If the retirement system determines that the retired member is an employee of the participating employer, rather than the private leasing company, temporary staffing agency, or other company, the retired member shall be subject to the provisions of Sections 1 through 5[and 6] of this administrative regulation.

Section 10.[9.] [A Member who has Reached the Member's Normal Retirement Age. (1) For purposes of administering the provisions of KRS 61.637, a bona fide separation from service shall not be required if a member has attained normal retirement age at the time of termination of employment.

(2) The requirement that there be at least a one (1) month break in service shall be applicable as set forth in this administrative regulation and in KRS 61.637.

Section 10.] Incorporation by Reference. (1) "Member and Employer Certification Regarding Reemployment", Form 6751, August[November 2007], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: August 21, 2008

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.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, December 9, 2008)**

**105 KAR 1:400. Federal taxation limitation year.**

RELATES TO: KRS 61.645(9)(g)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires[authorizes] the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.510 to 61.705, 16.510 to 16.652, and 78.510 to 78.852. This administrative regulation concerns the administration of testing contribution and benefit limits in accordance with 26 U.S.C. Section 415.

Section 1. Definitions. (1) "Fiscal year" is[as] defined by KRS 16.505(32), 61.510(19), and 78.510(19). [.] shall be the limitation year as set out in 26 U.S.C. Section 415 for determining contribution and benefit limits in the plans administered by the Kentucky Retirement Systems.]

(2) "415(b) limit" means[refers] to the limitation on benefits established by 26 U.S.C. 415(b).

(3) "415(c) limit" means[refers to] the limitation on annual additions established by 26 U.S.C. 415(c).

Section 2. The "fiscal year" shall be the limitation year as set out in 26 U.S.C. Section 415 for determining contribution and benefit limits in the plans administered by the Kentucky Retirement Systems.

Section 3. This administrative regulation shall apply [Basic 415 Limitations. This section applies] to all plans administered by Kentucky Retirement Systems. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415.

Section 4.[3.] Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a KRS plan shall apply as if the total benefits payable under all those[such] defined benefit plans in which the member has been a member were payable from one (1) plan.

Section 5.[4.] The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a KRS plan shall apply as if the total annual additions under all those[such] defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 6.[5.] Basic 415(b) Limitation. Before January 1, 1995, a member shall[may] not receive an annual benefit that exceeds the limits specified in 26 U.S.C. 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and subject to any additional limits that are[may be] specified in this section. A[In no event shall a] member's annual benefit payable in any limitation year from a KRS plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the Treasury Regulations under that section[regulations thereunder].

Section 7.[6.] Definition of Annual Benefit. For purposes of 26 U.S.C. 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover

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contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

Section ~~8.[7-]~~ Adjustments to Basic 415(b) Limitation for Form of Benefit.

(1) If the benefit under a KRS plan is other than the form specified in Section 6 of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

~~(2)[(4)]~~ If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence ~~shall be~~ is applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the KRS plan commencing at the same annuity starting date as the form of benefit to the member; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) applies a lump sum benefit, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the KRS plan for actuarial experience;

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one (1) year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

Section ~~9.[8-]~~ Benefits Not Taken into Account for 415(b) Limit.

(1) For purposes of this ~~administrative regulation~~ section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity and that con-

stitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section ~~10.[9-]~~ Other Adjustments in 415(b) Limitation. (1) ~~If in the event~~ the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of 26 U.S.C. 415(b), so that ~~the~~ such limit (as so reduced) equals an annual straight life benefit (when ~~the~~ such retirement income benefit begins) which is equivalent to a \$160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) ~~If in the event~~ the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for subsection (1) of this section shall not apply.

(3) The reductions provided for in subsection (1) of this section shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section ~~11.[10-]~~ Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under Section ~~6[1](2)~~ multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this section shall not ~~subsection cannot~~ reduce the maximum benefit below ten (10) percent. The reduction provided by this section ~~subsection~~ shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section ~~12.[11-]~~ \$10,000 Limit. ~~The~~ Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415(b) limit if the benefits payable, with respect to ~~the~~ such member under a KRS plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

Section ~~13.[12-]~~ Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2003, for purposes of applying the 415(b) limit to a member with no lump sum benefit, the following will apply:

(1) A member's applicable 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;

(2) To the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases from the funds created by KRS 16.510, 61.515, 78.520, until the time that ~~until such time as~~ the benefit plus the accumulated increases are less than the 415(b) limit; and

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d), and the Treasury Regulations thereunder. Nothing in this section shall prevent the member receiving benefits from the funds created by KRS 16.568, 61.663, and 78.652.

Section ~~14.[13-]~~ Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit shall ~~Limit will~~ be applied taking into consideration cost of living increases as required by 26 U.S.C. 415(b) and applicable Treasury Regulations.

Section ~~15.[14-]~~ 415(c) Limit. After-tax member contributions or other annual additions with respect to a member shall ~~may~~ not exceed the lesser of \$40,000 (as adjusted pursuant to 26 U.S.C.

415(d)) or 100% of the member's compensation.

(1) Annual additions ~~shall~~~~are defined to~~ mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account. Member contributions ~~shall be~~~~are~~ determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation ~~if applicable shall~~~~where applicable will~~ be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; ~~except~~~~provided~~~~however~~ that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another definition of compensation that is permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, is specified by a KRS plan, compensation ~~shall~~~~will~~ be defined as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under 26 U.S.C. 6041(d), 6051(a)(3), and 6052 and ~~shall~~~~will~~ be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a) However, for limitation years beginning on and after January 1, 1998, compensation ~~shall~~~~will~~ also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation ~~shall~~~~will~~ also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year ~~shall~~~~will~~ also include compensation paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

**1. The payment is:**

**a. Regular compensation for services during the employee's regular working hours;**

**b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or**

**c. Commissions, bonuses, or other similar payments; and**

**2. Absent a severance from employment, the payments would have been paid to the employee would have been able to use if employment had continued.**~~1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued.]~~

(c) Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Section ~~16~~~~15~~ Service Purchases Under Section 415(n). ~~(1)~~ Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a KRS plan, then the requirements of 26 U.S.C. 415(n) ~~shall~~~~will~~ be treated as met only if:

~~(a)~~~~(4)~~ The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all ~~these~~~~such~~ contributions as an annual benefit for purposes of the 415(b) limit; or

~~(b)~~~~(2)~~ The requirements of 26 U.S.C. 415(c) are met, determined by treating all ~~these~~~~such~~ contributions as annual additions for purposes of the 415(c) limit;

~~(2)~~~~(3)~~ For purposes of applying this section, a KRS plan ~~shall~~~~will~~ not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of ~~this section and shall~~~~this subparagraph and will~~ not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

~~(3)~~~~(a)~~ ~~For~~~~(4)~~ ~~For~~ purposes of this section the term "permissive service credit" ~~shall mean~~~~means~~ service credit:

~~1.~~~~(a)~~ Recognized by a KRS plan for purposes of calculating a member's benefit under a KRS plan;

~~2. Which the~~~~(b)~~ ~~Which such~~ member has not received under a KRS plan; and

~~3. Which the~~~~(c)~~ ~~Which such~~ member may receive only by making a voluntary additional contribution, in an amount determined under a KRS plan, which does not exceed the amount necessary to fund the benefit attributable to ~~the~~~~such~~ service credit;

~~(b)~~~~(d)~~ Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding ~~paragraph (a)~~~~2 of this subsection~~~~paragraph (b)~~ of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under a KRS plan.

~~(4) The KRS plan shall~~~~(5) The KRS plan will~~ fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this ~~section~~~~paragraph~~ before the member has at least five (5) years of participation under a KRS plan.

~~(5) For purposes of subsection (4) of this section~~~~(6) For purposes of subsection (5) of this section~~, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" ~~shall mean~~~~means~~ permissive service credit other than that allowed with respect to:

(a) Service ~~[(including parental, medical, sabbatical, and similar leave)]~~ as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service ~~[(including parental, medical, sabbatical, and similar leave)]~~ as an employee (other than as an employee described in paragraph (a) of this subsection of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the KRS plan.

~~(6)~~~~(7)~~ In the case of service described in ~~subsection (5)(a), (b), or (c)~~~~subsection (6)(a), (b), or (c)~~ of this section, ~~the~~ ~~such~~ service will be nonqualified service if recognition of ~~the~~~~such~~ service would cause a member to receive a retirement benefit for the same service under more than one plan.

~~(7)~~~~(8)~~ In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):~~]~~

(a) The limitations of ~~subsection (4) shall~~~~subsection (5)~~ of this section will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a KRS plan ~~shall~~ ~~will~~ apply to ~~these~~~~such~~ amounts and any benefits attributable to ~~these~~~~such~~ amounts.

~~(8)~~~~(9)~~ For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was

allowed to be purchased under the terms of a KRS plan as in effect on August 5, 1997. For purposes of this ~~subsection~~[paragraph] an eligible member shall be[is] an individual who first became a member in a KRS plan before January 1, 1998.

Section ~~17~~[16:] Modification of Contributions for 415(c) and 415(n) Purposes. ~~The~~[Notwithstanding any other provision of law to the contrary, the] department may modify a request by a member to make a contribution[under] to a KRS plan if the amount of the contribution would exceed the limits provided in Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, Kentucky Retirement Systems[the department] may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to subsection (1) of this section will not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c) or 415(n), Kentucky Retirement Systems[the department] may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section ~~18~~[17:] Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the KRS plan with respect to an amount previously refunded upon a forfeiture of service credit under the KRS plan or another governmental plan maintained by the State or a local government within the state shall not be taken into account for purposes of the 415(b) or (c) limits.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

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.

**FINANCE AND ADMINISTRATION CABINET**  
**Kentucky Retirement Systems**  
**(As Amended at ARRS, December 9, 2008)**

**105 KAR 1:420. 401(h) account established under 26 U.S.C. 401(h).**

RELATES TO: KRS 61.701, 61.702, 61.645(9)(g)

STATUTORY AUTHORITY: KRS ~~[61.701-]~~ 61.702, 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires 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. Pursuant to the provisions of KRS 61.702(b)(5), as amended by HB 1 of the 2008 Special Session and of KRS 61.645, this administrative regulation establishes[there is hereby established] effective September 1, 2008, a separate 401(h) account[established] under 26 U.S.C. 401(h) within each of the following: the Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Retirement Trust Fund.

Section 1. Definitions. (1) "Dependent is defined by the Internal Revenue Code, 26 U.S.C. 152, excluding subsections (b)(1), (b)(2), and (d)(1)(B)."

(2) "Medical expense" means expense for medical care as defined by 26 U.S.C. Section 213(e)(1) of the Internal Revenue Code.

(3) "Retired", for purposes of eligibility to receive the medical benefits described in 26 U.S.C. 401(h), means:

(a) An employee is eligible to receive benefits under the Kentucky Retirement Systems;

(b) The employee is not still employed by the employer; and

(c) A separation from employment has occurred.

(4) "Systems" means the retirement systems administered by Kentucky Retirement Systems. ~~[To be "retired" for purposes of eligibility to receive medical benefits described in 26 U.S.C. 401(h), an employee must be eligible to receive benefits under the Systems. For purposes of this section, an employee is not considered to be eligible to receive these benefits if he or she is still employed by his/her employer. A separation from employment is a condition to receiving these benefits.~~

~~(2) "Dependent" shall have the same meaning as that assigned to it by Internal Revenue Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B).~~

~~(3) "Medical expense" means expense for medical care as defined in Internal Revenue Code Section 213(e)(1).~~

Section 2. The purpose of the 401(h) account established under 26 U.S.C. 401(h) in each of the systems shall be[is] to pay part of the subsidy for health benefits that are otherwise payable from the health insurance fund.

Section 3. The one (1) percent mandatory contribution established by KRS 61.702(2)(b)[HB 1] shall be deposited in the separate account of each system trust fund, respectively. ~~[Section 4. The 401(h) accounts established under 26 U.S.C. 401(h) shall be used solely to pay medical expenses to retired employees, their spouses, and dependents.]~~

Section ~~4~~[5:] The health benefits shall be[are] subordinate to the retirement benefits provided by the systems. (No life insurance protection is provided by any system.) This requirement shall[will] not be satisfied unless the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the systems (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the 401(h) accounts established under 26 U.S.C. 401(h).

Section ~~5~~[6:] Amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall be[are] for the exclusive purpose of paying medical expenses for retirees, their spouses, and dependents. Amounts in the 401(h) accounts established under 26 U.S.C. shall not be diverted for other purposes.

Section ~~6~~[7:] Any amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall revert to the employers upon satisfaction of all liabilities for medical benefits.

Section ~~7~~[8:] Employees shall[do] not have an individual interest in the 401(h) accounts established under 26 U.S.C. 401(h).

Section ~~8~~[9:] The 401(h) accounts established under 26 U.S.C. 401(h) may be commingled with the pension assets of the trust funds for investment purposes. Investment earnings shall be credited to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

Section ~~9~~[10:] Administrative and other expenses shall be charged to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

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.

VOLUME 35, NUMBER 7 – JANUARY 1, 2009

FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, December 9, 2008)

105 KAR 1:430. General Compliance with Federal Tax Laws.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 26 U.S.C. 401(a)(7),(8), (25) 26 U.S.C. 414(d),(p),(u), 26 U.S.C. 503(b)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 and to conform with federal statute. This administrative regulation establishes Kentucky Retirement Systems' compliance with 26 U.S.C. 401(a); 26 U.S.C. 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefits plans. ~~[Kentucky Retirement Systems will administer the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System as qualified defined benefit plans pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code, regulations and such other Internal Revenue Code Sections as applicable. This administrative regulation sets out certain provisions necessary to comply with applicable federal law.]~~

Section 1. Compliance with 26 U.S.C. 401(a)(7) and 401(a)(8) for Vesting and Forfeitures. (1) A plan member shall be 100% vested in the member's accumulated contributions at all times.

(2) In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan ~~shall[will]~~ not be used to pay benefit increases. However, ~~these[such]~~ forfeitures shall be used to reduce employer contributions.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) ~~shall[will]~~ be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. Effective December 12, 1994, notwithstanding any other provision of the retirement system law; contributions, benefits, and service credit with respect to qualified military service ~~shall be[are]~~ governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. Effective as of July 1, 1989, the board ~~shall[may]~~ not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Retirement Systems ~~shall[will]~~ determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by rule; ~~these benefits shall[such benefits will]~~ not be subject to employer discretion.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH AGENCY: September 2, 2008 at 4 p.m.

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.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Speech-Language Pathology  
and Audiology  
(As Amended at ARRS, December 9, 2008)

201 KAR 17:014. Temporary ~~licensure[licenses]~~ for speech-language pathologist, speech-language pathology assistant, and audiologist.

RELATES TO: KRS 334A.033, 334A.050, 334A.181, 334A.183, 334A.185~~[-and 201 KAR 17:012.]~~

STATUTORY AUTHORITY: KRS ~~13A.100, 334A.010;~~ 334A.080(3), 334A.181(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.181 authorizes the board to provide temporary licensure by promulgating administrative regulations. This administrative regulation provides requirements for the issuance of temporary licenses.

Section 1. Definition. "Board Administrator" means the Director of the Division of Occupations and Professions.

Section 2. Requirements. (1) Upon receipt of application showing that applicant meets the requirements set forth in KRS 334A.033, 334A.050, 334A.183, 334A.185, and 201 KAR 17:012, the Board Administrator shall issue a temporary license to the applicant, by sending a letter to the applicant on Board letterhead.

(2) The temporary license shall entitle the applicant to practice as a speech-language pathologist, speech-language pathology assistant, or audiologist until the applicant is reviewed by the Kentucky Board of Speech Language Pathology and Audiology.

(3) A temporary license shall not be effective for more than 180 days as provided by KRS 334A.181(3).

Section 3. Unprofessional Conduct. If the application shows evidence of unprofessional conduct per KRS 334A.180(1) or (4), ~~the applicant[person]~~ shall not be granted temporary licensure, and the application shall be held pending review by the board.

This is to certify that the Chair of the Kentucky Board of Speech-Language Pathology and Audiology executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 309.

PAMELA ADAMS ISON, Chair

APPROVED BY AGENCY: October 15, 2008

FILED WITH LRC: October 15, 2008 at 10 a.m.

CONTACT PERSON: Gerald W. Hoppmann, Director, Kentucky Board of Speech Language Pathology and Audiology, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Speech-Language Pathology  
and Audiology  
(As Amended at ARRS, December 9, 2008)

201 KAR 17:030. License fees and requirements for inactive status.

RELATES TO: KRS 334A.160, 334A.170

STATUTORY AUTHORITY: KRS 334A.080(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.080(6) requires the board to establish fees for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, in accordance with the maximum limits established in KRS 334A.160 and 334A.170. KRS 334A.030(3) requires the board to establish requirements for licensure and renewals. This administrative regulation establishes the required fees and the requirements for inactive status.

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

Section 1. Fee Schedule. The following fees shall be paid in connection with speech-language pathologist and audiologist applications, renewals, and penalties.

(1) Application fee for a speech-language pathologist license, fifty (50) dollars.

(2) Application for an audiologist license, fifty (50) dollars.

(3) Combined application fee for a speech-language pathologist and audiologist license, \$100.

(4) Application fee for a speech-language pathology assistant license, fifty (50) dollars.

(5) Initial speech-language pathologist license fee, \$100.

(6) Initial audiologist license fee, \$100.

(7) Combined speech-language pathologist and audiologist license fee, \$200.

(8) Initial speech-language pathology assistant license fee, seventy-five (75) dollars.

(9) **Biennial renewal**[Renewal] fee for speech-language pathologist license, ~~\$100~~[fifty (50) dollars].

(10) **Biennial** renewal fee for audiologist license, ~~\$100~~[fifty (50) dollars].

(11) **Biennial** combined renewal fee for speech-language pathologist and audiologist license, ~~\$200~~[\$400].

(12) **Biennial** renewal fee for speech-language pathology assistant, ~~\$100~~[fifty (50) dollars].

(13) **Biennial** renewal fee for grace period extending from January 31 to March 2:

(a) For speech-language pathologist license, ~~\$150~~[ninety (90) dollars].

(b) For audiologist license, ~~\$150~~[ninety (90) dollars].

(c) Combined fee for speech-language pathologist and audiologist license, ~~\$300~~[\$180].

(d) For speech-language pathology assistant, ~~\$150~~[ninety (90) dollars].

(14) In addition to the biennial renewal fees provided for in Section 1(9) through (10) delinquency fees[renewal] after March 2 shall be:

(a) For speech-language pathologist license, ~~\$150~~[\$125].

(b) For audiologist license, ~~\$150~~[\$125].

(c) **Biennial** combined fee for speech pathologist and audiologist license, ~~\$300~~[\$250].

(d) For speech-language pathology assistant, ~~\$150~~[\$125].

(15) Application fee for interim licensure for a speech-language pathologist, fifty (50) dollars.

(16) Application fee for interim licensure for an audiologist, fifty (50) dollars.

(17) Combined fee for speech-language pathologist and audiologist interim licensure, \$100.

(18) There shall not be a renewal fee for interim licensure. The application fee of fifty (50) dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.

(19) Application fee for interim licensure for a speech-language pathology assistant, fifty (50) dollars.

Section 2. (1) A completed [Annual] Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate, shall be submitted if the licensee wants to:

(a) [(1)] Renew his license;

(b) [(2)] Request to return to an active status from an inactive status;

(c) [(3)] Request, or remain on, an inactive status; or

(d) [(4)] Terminate licensure.

(2) The schedule of licensure renewals shall be as follows:

(a) Effective January 1, 2009:

1. All licensees shall renew their licenses.

2. A licensee having a license number ending in an even number shall:

a. Renew for a period of one (1) year; and

b. Pay one-half of the appropriate renewal fee established in Section 1(9)-(14) of this administrative regulation; and

3. A licensee having a license number ending in an odd number shall:

a. Renew for a period of two (2) years; and

b. Pay the appropriate renewal fee established in Section 1(9)-(14) of this administrative regulation.

(b) Effective January 1, 2010, a licensee:

1. Whose license number ends with an:

a. Even number shall renew his or her license biennially in even-numbered years; and

b. Odd number shall renew his or her license biennially in odd-numbered years; and

2. Shall pay the appropriate renewal fee as established in Section 1(9) - (14) of this administrative regulation. [ Effective subsequent to initial licensure, applicants for renewal of Speech-Language Pathologists, Speech-Language Pathology Assistants, and Audiologists shall, after being divided into groups by odd and even license numbers shall:

(a) Renew for a one (1) year period with applicable prorated fees, if their group is not up for biennial renewal; and

(b) Renew for the biennium if their group is up for biennial renewal.]

Section 3. If an application is filed during the period of December 17 to January 30 and a license issued, the board shall waive the renewal of the license for the ensuing licensing year.

Section 4. Inactive Licenses. (1) Fees.

(a) The inactive license fee for a speech-language pathologist for a **biennial licensing period**[licensing year] shall be ~~twenty (20)~~[ten (10)] dollars.

(b) The inactive license fee for an audiologist for a **biennial licensing period**[licensing year] shall be ~~twenty (2)~~[ten (10)] dollars.

(c) The combined inactive license fee for a speech-language pathologist and audiologist for a **biennial licensing period**[licensing year] shall be ~~twenty (20)~~[ten (10)] dollars.

(d) The inactive license fee for a speech-language pathology assistant **for a biennial licensing period** shall be ~~twenty (20)~~[ten (10)] dollars.

(2) Reactivation of an inactive license to practice speech-language pathology or audiology may be obtained by:

(a) Filing a completed[Annual] Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate;

(b) Payment of the current renewal fee as set forth in Section 1 of this administrative regulation; and

(c) Compliance with the continuing education requirements established in 201 KAR 17:090, Sections 10 and 11.

(3) Application for an inactive license shall be made to the board prior to March 2 and shall be accompanied by the appropriate fee for the licensing year.

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

(a) "[Annual] Renewal Application", **December 2008**[January 2000]; and

(b) "Renewal Application for Speech-Language Pathology Assistants", January 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chair of the Kentucky Board of Speech-Language Pathology and Audiology executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 309.

PAMELA ADAMS ISON, Chair

APPROVED BY AGENCY: October 15, 2008

FILED WITH LRC: October 15, 2008 at 10 a.m.

CONTACT PERSON: Gerald W. Hoppmann, Director, Kentucky Board of Speech Language Pathology and Audiology, 911

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

Leewood Drive, Frankfort, Kentucky 40601; phone (502) 564-3296  
ext. 224, fax (502) 696-1899.

### GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (As Amended at ARRS, December 9, 2008)

#### 201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3), 324A.040(2), 324A.052

STATUTORY AUTHORITY: KRS 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 3351). KRS 324A.035(1) and (3) require the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the: types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

- (1) Certified general real property appraiser;
- (2) Certified residential real property appraiser;
- (3) Licensed real property appraiser; or
- (4) Associate real property appraiser.

Section 2. Scope of Practice. (1) Certified general real property appraiser. A certified general real property appraiser may perform appraisals of all types of real property [~~regardless of transaction complexity or value~~].

(2) Certified residential real property appraiser. A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units, [~~regardless of transaction complexity or value~~], ~~and nonresidential real property with a transaction value less than \$250,000~~.

(3) Licensed real property appraiser. A licensed real property appraiser may perform appraisals of:

- (a) Noncomplex, one (1) to four (4) residential units with a transaction value less than \$1,000,000; and
- (b) Complex, one (1) to (4) residential units with a transaction value less than \$250,000; and
- (c) ~~Nonresidential real property with a transaction value less than \$250,000~~.

(4)(a) Associate. An associate real property appraiser:

1. May perform an appraisal of property that the supervising appraiser of the associate is permitted to appraise; and
2. Shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) A separate appraisal log shall be maintained for each supervising appraiser.

(c) The associate shall record in the log for each appraisal the following:

1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed;
5. Number of hours worked; and
6. Signature and state license or certification number of the supervising appraiser.

(d) The associate shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall:

1. Have been licensed or certified by the board for a period of one (1) year;
2. Be in good standing with the board; and

3. Be responsible for the training and supervision of the associate;

4. Effective January 1, 2009, only a Certified Residential Real Property Appraiser or a Certified General Property Appraiser who has been certified by the board for a period of one (1) year is eligible to be a supervising appraiser; and

5. Effective January 1, 2009, only a Certified General Real Property Appraiser shall provide supervision for a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(f) The supervising appraiser shall:

1. Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;

2. Review reports by the associate;

3. Personally inspect each appraised property and the comparable sales with the associate on the associate's first fifty (50) real property appraisal assignments, to insure that the associate is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040, for the property type;

4. Allow an associate who has completed the fifty (50) appraisal assignments required by subparagraph 3 of this paragraph to inspect properties located within fifty (50) miles of the supervisor's office without being accompanied by the supervisor, if the supervisor has determined that the associate is competent to perform an appraisal;

5. For the twelve (12) months following the date of issuance of an associate license, accompany the associate and inspect each appraised property and the comparable sales on each appraisal assignment located more than fifty (50) miles from the supervisor's office;

6. Be limited to a maximum of three (3) real property associates at a time; and

7. Notify the board immediately when the supervision of a real property associate has terminated; and[-]

8. Not be employed by an associate or by a company, firm, or partnership in which the associate has a controlling interest.

(g) A person otherwise qualified for supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

1. Prohibited from supervising associates;

2. Limited to the number of associates to supervise; or

3. Be required to take additional courses approved by the board before being permitted to supervise an associate.

(h) An associate shall submit to the board two (2) complete summary appraisal reports.

1. The first report shall be submitted to the board six (6) months following the date of issuance of the associate license. The second report shall be submitted to the board twelve (12) months following the date of issuance of the associate license.

2. If necessary to determine the competency of the associate, the board shall request additional reports from the associate.

(5)(a) A first time supervisor and a new associate shall attend the board-approved course in supervision practices within six (6) months of beginning supervision.

(b) All current supervisors and all current associates shall have completed the board-approved supervisor training course prior to July 1, 2009.

(c) To be eligible to provide supervision, a supervisor shall attend the board-approved course in supervision practices every three (3) years.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by 201 KAR 30:050 and 060; and

(2) Applies to the board on the "Appraiser Licensure/Certification Application."



## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

Section 4. Incorporation by Reference. (1) "Appraiser Licensure/Certification Application KREAB Form APP100 - Revised 1/09[1/02]" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2624 Research Park Drive, Suite 204, Lexington, Kentucky 40511, (859) 543-8943, Monday through Friday, 8 a.m. to 4:30 p.m.

J.W. GRABEEL, Chair

APPROVED BY AGENCY: June 24, 2008

FILED WITH LRC: August 14, 2008 at 3 p.m.

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

### AGRICULTURE Livestock Sanitation (As Amended at ARRS, December 9, 2008)

#### 302 KAR 20:110. Treatment of imported mares.

RELATES TO: KRS 257.070, 9 C.F.R. 93.301[92.304]

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes a technique for the treatment of a mare imported into Kentucky from a country listed in 9 C.F.R. 93.301[92.304] as a country affected by contagious equine metritis (CEM).

Section 1. Definitions. (1) "Application to import" means a request to import a horse or horses to a single specific farm or quarantine facility. [If multiple destinations are declared for animals to be quarantined, each listed destination shall constitute a separate application.]

(2) "Breeding" or "bred" means the natural covering of a mare.]

(3)[(2)] "CEM" means contagious equine metritis.

(4)[(3)] "CF test" means a complement-fixation test on equine serum for the detection of antibodies to the contagious equine metritis bacterium.

(5)[(4)] "Cleansing of a stallion" means thorough washing, using warm water, of the external genitalia of the stallion with the penis in full erection.

(6)[(5)] "Mare" means a female horse over 731 days of age.

(7)[(6)] "Set of swabs" means a swab obtained from the clitoral sinus and clitoral fossa.

Section 2. A mare imported into Kentucky, for breeding, from a country known to be affected by CEM shall be treated by or under the direct supervision of a Kentucky licensed, accredited veterinarian according to the following procedure:

(1) Following arrival into Kentucky, the veterinarian shall obtain a set of swabs from the mare on days one (1), four (4), and seven (7).

(2) On completing the set of swabs on day seven (7), the accredited veterinarian shall manually remove all organic debris from the clitoral fossa and sinuses. The sinuses shall then be flushed with an approved ceruminolytic agent until all remaining debris has been removed. The accredited veterinarian shall, for five (5) consecutive days, wash and clean (scrub), with a solution of not less than two (2) percent chlorhexidine in a detergent base, the external genitalia, vaginal vestibule, clitoral fossa, and clitoral sinuses. The clitoral fossa, clitoral sinuses, external genitalia, and vaginal vestibule shall be filled and covered with an antibiotic ointment that is effective against the CEM organism and is approved by USDA and the Kentucky State Veterinarian.

(3) After the procedures established in subsections (1) and (2) of this section have been satisfactorily completed and all three (3)

of the swabs are reported to the department as testing negative for CEM bacterium, the imported mare may be released from quarantine.

(4) Before the imported mare may be bred in Kentucky, a swab shall be collected from the endometrium and cultured negative for CEM. This swab may be included with any of the three (3) required sets of swabs, or for a pregnant mare, may be collected after foaling.

(5) An imported mare bred in Kentucky shall be prophylactically scrubbed and bred last of the group of mares bred during that session. The external genitalia of the covering stallion shall be cleansed, as defined in Section 1 of this administrative regulation, after breeding an imported mare. The next three (3) mares bred to the stallion, after the imported mare, shall have a blood sample collected and submitted for CF testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and the name of the covering stallion, date, and time bred.

(6)[~~It shall be the responsibility of~~] The farm where the stallion is standing shall to notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that a postbreeding CF test is required.

(7) The farm where the stallion is standing shall contact the Kentucky State Veterinarian and provide the name, breeding date, time, and location of the imported mare covered, and the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare.

Section 3. The imported mare may be released from quarantine when:

(1) The requirements of Sections 1 and 2 of this administrative regulation have been completed; and

(2) The required specimens taken from the mare test negative for the CEM bacterium.

Section 4. A CEM culture positive mare shall remain under quarantine and shall be treated as described in Section 2(2) and (5) of this administrative regulation. The mare shall have sets of swabs obtained, as described in Section 2(1) of this administrative regulation, no less than twenty-one (21) days after the last day of treatment. If all required specimens taken from the mare test negative for the CEM bacterium, the mare may be released from quarantine.

Section 5. User fees[A user fee] shall be assessed for an equine import. (1)(a) An import broker making application to import mares into Kentucky for completion of a CEM quarantine shall be assessed and pay a fee for the processing, implementation, and monitoring of the quarantine.

(b) If multiple destinations are declared for animals to be quarantined, each listed destination shall constitute a separate application.

(2) An application processing and premise inspection fee of \$100 shall[will] be assessed for each application received to import mares into Kentucky for completion of the CEM quarantine.

(3) Upon receipt of the mare(s) at the quarantine facility, the broker shall[will] be assessed a fee of \$120 per individual mare for the receipt, inspection, quarantine, and monitoring to establish the animal's disease status during the quarantine period.

(4) An import broker shall pay a fee for each shipment of mares which arrives at a Kentucky quarantine destination on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59 a.m., the assessed fee shall be sixty (60)[forty (40)] dollars per hour with a minimum of two (2) hours time charged.

(b) For state-recognized holidays, the assessed fee shall be \$120[eighty (80)-dollars] per hour with a minimum of two (2) hours charged. The holiday fee shall apply to all mares received during the holiday period which runs from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday.

~~(5) [(2)]~~ The broker shall pay the assessed fees by check. The check shall be made payable to the Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Office of State Veterinarian, ~~the assessed fee~~ within ninety-six (96) hours of receipt of the charges.

~~(6) [(3)]~~ Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: October 2, 2008

FILED WITH LRC: October 8, 2008 at 3 p.m.

CONTACT PERSON: Dr. Robert Stout or Dr. Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601, phone (502)564-3956, fax (502) 564-7852.

**AGRICULTURE  
Livestock Sanitation  
(As Amended at ARRS, December 9, 2008)**

**302 KAR 20:120. Treatment of imported stallions.**

RELATES TO: KRS 257.070, **9 C.F.R. 93.301**

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that the importing of an animal into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes techniques for the treatment of stallions imported into Kentucky from a country outside the continental United States, its territories and possessions, or Canada.

Section 1. Definitions. (1) "Application to import" means a request to import a horse or horses to a single specific farm or quarantine facility.~~[If multiple destinations are declared for animals to be quarantined, each listed destination shall constitute a separate application.]~~

(2) "Breeding" or "bred" means the natural covering of a mare.

~~(3) [(2)]~~ "CEM" means contagious equine metritis.

~~(4) [(3)]~~ "CF test" means a complement-fixation test on equine serum for the detection of antibodies to the contagious equine metritis bacterium.

~~(5) [(4)]~~ "Set of swabs" **means:**

**(a) For a female equine,**~~[for female equines, means]~~ a swab obtained from the clitoral sinus and clitoral fossa; **and**

**(b) [(6)] [(5)]**~~["Set of swabs"]~~ For an intact male equine,~~[means]~~ a swab obtained from the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis.

~~(6) [(7)] [(6)]~~ "Stallion" means a male horse, other than a gelding, over 731 days of age.

Section 2. Stallions over 731 days of age at the time of importation from outside the continental United States, its territories, possessions, or Canada shall, before breeding, be treated by or under the direct supervision of a Kentucky licensed, accredited veterinarian according to the following:

(1) While wearing disposable gloves and using disposable equipment, the veterinarian shall collect one (1) set of swabs from the stallion to be cultured for CEM.

(2) The stallion shall be bred to two (2) test mares that have been qualified as CEM free. The test mares shall qualify as CEM free if:

(a) They test negative to a CF test; and

(b) A set of swabs taken from the mares on days one (1), four (4), and seven (7) are culture negative for the CEM bacterium.

(3) After being bred by the stallion, a set of swabs shall be collected from the test mares on the third, sixth, and ninth days after breeding.

(4) The test mares shall have a CF test conducted fifteen (15) days after breeding.

(5) With the stallion in full erection, the veterinarian shall, for five (5) consecutive days, wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine~~[chlorhexicine]~~ in a detergent base, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis. The external genitalia, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis, shall then be filled and covered with an antibiotic ointment that is effective against the CEM organism and which is approved by the USDA and the Kentucky State Veterinarian. **A list of approved laboratories may be found at [http://www.aphis.usda.gov/animal\\_health/lab\\_info\\_services/downloads/Approvedlabs\\_CEM.pdf](http://www.aphis.usda.gov/animal_health/lab_info_services/downloads/Approvedlabs_CEM.pdf)**

~~(7) [A list of approved laboratories may be found at <http://www.aphis.usda.gov/vs/nvs/LabCertification/CEMLabs2001.htm>.]~~ All tests and cultures required by this section shall be conducted at a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian. If all required specimens taken from the test mares and stallion are test negative and culture negative for the CEM bacterium, the stallion and the test mares may be released from quarantine.

Section 3. User fees~~[A user fee]~~ shall be assessed for an equine import. (1) **(a)** An import broker making application to import a stallion into Kentucky for completion of a CEM quarantine shall be assessed and pay a fee for the processing, implementation, and monitoring of the quarantine.

**(b) If multiple destinations are declared for animals to be quarantined, each listed destination shall constitute a separate application.**

**(2) an application processing and premise inspection fee of \$100 shall**~~[will]~~ be assessed for each application received to import horses into Kentucky for completion of the prescribed CEM quarantine and testing.

**(3) Upon receipt of the stallion at the quarantine facility the broker shall**~~[will]~~ be assessed a fee of \$260 per individual stallion for the receipt, inspection, quarantine, test breeding, and monitoring of the stallion and test mares to establish the animal's disease status during the quarantine period.

**(4) An import broker shall pay a fee for each shipment of stallions**~~[equine (stallions and mares)]~~ which arrive at a Kentucky quarantine destination on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59 a.m., the assessed fee shall be ~~sixty (60)~~**(60)**~~[forty (40)]~~ dollars per hour with a minimum of two (2) hours time charged.

(b) For state-recognized holidays, the assessed fee shall be ~~\$120~~**[eighty (80) dollars]** per hour with a minimum of two (2) hours time charged. The holiday fee shall apply to all stallions received during the holiday period which runs from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday.

~~(5) [(2)]~~ The broker shall pay the assessed fees by check. The check shall be made payable to the Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Office of State Veterinarian, ~~the assessed fee~~ within ninety-six (96) hours of receipt of the charges.

~~(6) [(3)]~~ Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: October 2, 2008

FILED WITH LRC: October 8, 2008 at 3 p.m.

CONTACT PERSON: Dr. Robert Stout or Dr. Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601, phone (502)564-3956, fax (502) 564-7852.

VOLUME 35, NUMBER 7 – JANUARY 1, 2009

DEPARTMENT OF AGRICULTURE  
(As Amended at ARRS, December 9, 2008)

302 KAR 79:010. Testing and inspection program.

RELATES TO: KRS 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306.12, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program.

Section 1. Definitions. (1) "Distributor" means any person who transports, stores, or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer facility.

(2) "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline with a substantial amount of one (1) or more oxygenates added.

(3) "Octane rating" means the rating of the antiknock characteristic of a grade or type of gasoline which is determined by taking the average of the sum of the research octane number and the motor octane number.

Section 2. Administration. The Division of Regulation and Inspection, Kentucky Department of Agriculture shall administer the Motor Fuels Inspection and Testing Program pursuant to KRS 363.900-908.

Section 3. Standard Specifications. (1) Pursuant to KRS 363.902(2), Gasoline offered for sale at a retail facility shall conform to current ASTM D-4814 specifications, with the following exceptions:

(a) Distillation range (ASTM D-86) of gasoline containing up to ten (10) percent ethanol shall be the same as specified for gasoline except the minimum temperature at fifty (50) percent evaporated shall be 150 degrees Fahrenheit (sixty-six (66) degrees Celsius). For gasoline containing up to ten (10) percent ethanol, the vapor pressure limit for each class shall be increased by one (1) pound per square inch and the ASTM V/L (vapor to liquid ratio) specification is waived as required by KRS 363.904(1)(b)2.

(b) For the periods from May 1 through September 15, the concentration of ethanol shall be at least nine (9) percent and no more than ten (10) percent by volume of the gasoline to qualify for the increased vapor pressure allowance.

(2) The test methods used to determine the standards of fuel quality shall conform to ASTM D-4814.

(3) Samples of motor fuels obtained for testing shall be obtained in a manner consistent with ASTM D-4814.

(4) Gasoline shall not be offered for retail sale under the name "premium" or "super" gasoline unless the antiknock octane index is greater than or equal to ninety-one (91) antiknock octane index.

(5) Gasoline shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless the antiknock octane index is greater than or equal to eighty-nine (89) ~~[and less than or equal to ninety (90) antiknock octane index]~~.

(6) Gasoline shall not be offered for retail sale under the name "regular" gasoline unless the antiknock octane index is greater than or equal to eight-six (86) ~~[and less than or equal to eighty-eight (88) antiknock octane index]~~.

Section 4. General Considerations. (1) Gasoline, diesel fuel, and gasoline-oxygenate blends sold in Kentucky shall state on either the bill of lading or invoice the following:

(a) The name of the person transferring the motor fuel;

(b) The name of the person to whom the motor fuel is being transferred;

(c) The date of the transfer;

(d) The octane rating, if the motor fuel is gasoline or a gasoline oxygenate blend; and

(e) A declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

(2) Each retail facility selling motor fuel shall retain the bills of lading or invoices at the location to which the motor fuel is transferred for a period of not less than thirty (30) days. If a person sells motor fuels at more than one (1) location, the bills of lading or invoices may be retained at a central location, if the bills of lading or invoices are made available to the department upon request.

(3) Retail dispensing devices.

(a) All retail dispensing devices shall post the octane rating of all gasoline sold to consumers. At least one (1) label on each face of the dispenser shall identify the octane rating. If two (2) or more gasolines with different octane ratings are sold from a single dispenser, separate labels for each octane rating shall be placed on the face of the dispenser.

(b) The label, or labels, shall be placed conspicuously on the dispenser and be in full view of consumers. The label, or labels, shall also be placed as near as reasonably practical to the price of the gasoline.

(c) The label showing the minimum octane rating shall meet the same specifications as required under 16 C.F.R. Part 306.12.

Section 5. Diesel Fuel. (1) Pursuant to KRS 363.902(2), diesel fuel offered for sale at a retail facility for use as a motor fuel shall conform to current ASTM D-975 specifications.

(2) Each retail dispenser dispensing diesel fuel to be used as a motor fuel shall be labeled with a name or grade containing the word "diesel". The labeling shall be placed conspicuously on the dispenser and be in full view of consumers.

Section 6. Product Storage Identification. The fill connection for any petroleum product storage tank or vessel at the retail level shall be permanently, plainly, and visibly marked in accordance with the American Petroleum Institute color codes as specified and published in the API Recommended Practice 1637.

Section 7. Inspection of Premises. (1) The department shall have access during normal business hours to all distributor and retailer records relating to the distribution or sale of motor fuel.

(2) The department shall have access to all motor fuel for the purpose of examination, inspection, taking of samples and investigation of a retailer or distributor. If access is denied by the owner or person representing a retailer or distributor, the department may obtain a search warrant or an injunction from a court of competent jurisdiction.

(3) Samples of not more than one (1) gallon per grade per inspection may be collected from any distributor or retail outlet without cost to the state. The department inspector shall present proper identification to the employee in charge prior to obtaining samples.

(4) The department may issue a stop-sale order for any motor fuel not in compliance with provisions of this administrative regulation. The retailer shall be notified immediately of the stop-sale order. The order shall be in writing and contain an explanation of the violation. A stop-sale order shall be rescinded by the department upon resolution of the violation. The stop-sale order shall apply only to the location where sample analysis indicates an ASTM specification violation.

Section 8. Violation Process. (1) If the department determines a violation of KRS 363.900-908 has occurred, the offending party shall be immediately notified in writing of the violation. A notice of violation which contains a brief description of the specific violation shall be issued.

(2) A stop-sale order may be included with the notice of violation.

(3) If a stop-sale order is issued, the product shall be removed from sale to the public until the product is brought into compliance with KRS 363.900-908.

(4) A certification that the product meets the requirements of KRS 363.900-908 shall be furnished to the department before sale shall be resumed. Additional samples of the product may be required.

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(5) The retail facility, within ten (10) days of receipt of notice of violation, shall provide detailed documentation to the department describing the corrective action to bring the product into compliance with KRS 363.900-908.

(6) In issuing an order under KRS 363.900 to 363.908, the department shall use the "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995" and may also consider the degree and extent of harm caused by the violation, the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation, whether the violation was committed willfully, and the compliance record of the violator when determining the civil penalty to be assessed.

(7) For a first violation, the civil penalty shall not exceed \$1,000 nor be less than twenty-five (25) dollars. For a second or subsequent violations, the civil penalty shall not exceed \$5,000 nor be less than fifty (50) dollars.

(8) The civil penalty shall be due within thirty (30) days of receipt of the notice of violation unless a hearing is requested in accordance with subsection (10) of this section.

(9) Failure to pay a civil penalty within thirty (30) days after receipt of the violation may result in a stop-sale order being issued by the department.

(10) Upon receipt of notice of violation, an aggrieved party may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's findings and order. The hearing shall be conducted in accordance with KRS Chapter 13B.

(11) Appeals may be taken from final orders within thirty (30) days to the Franklin Circuit Court.

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

(a) American Petroleum Institute color codes as specified and published in API Recommended Practice 1637, September 1995 edition; and

(b) "Motor Fuels Inspection and Testing Civil Penalty Guidelines", 1995, ASTM D-4814-01a, Standard Specifications for Automotive Spark Ignition Engine Fuel, November 2001 edition;

(b) "ASTM D-975-02, Standard Specification for Diesel Fuel Oils, January 2002 edition";

(c) "American Petroleum Institute color codes as specified and published in API Recommended Practice 1637, September 1995 edition";

(d) "16 C.F.R. 306.12 (revised as of January 1, 2002)"; and

(e) "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995";

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: October 6, 2008

FILED WITH LRC: October 10, 2008 at 10 a.m.

CONTACT PERSON: Mark Farrow, Kentucky Department of Agriculture, 32 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-6099, fax (502) 564-5016.

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, December 9, 2008)

#### 501 KAR 6:270. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promul-

gate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures," September 12, 2008, [February 13, 2006] are incorporated by reference. Probation and Parole Policies and Procedures include:

- ~~[27-01-01 Probation and Parole Procedures (Added 1/12/05)~~
- ~~27-02-01 Duties of Probation and Parole Officers (Added 1/12/05)~~
- ~~27-02-02 Probation and Parole Officers Telecommuting Program (Added 1/12/05)~~
- ~~27-03-01 Workload Formula (Added 1/12/05)~~
- ~~27-05-01 Testimony, Court Demeanor and Availability of Legal Services (Added 1/12/05)~~
- ~~27-06-02 Equal Access to Services (Added 1/12/05)~~
- ~~27-07-01 Cooperation with Law Enforcement Agencies (Added 1/12/05)~~
- ~~27-08-01 Use of Force and Critical Incident Reporting (Amended 12/9/08)(9/12/08)](Added 4/12/05)]~~
- ~~27-09-01 Kentucky Community Resources Directory (Added 1/12/05)~~
- ~~27-10-01 Pretrial Diversion (Amended 4/12/05)~~
- ~~27-11-01 Citizen Complaints (Amended 2/13/06)~~
- ~~27-11-02 Staff-Offender Interaction (Added 9/12/08)~~
- ~~27-12-01 [Supervision:] Case Classification (Amended 12/9/08)(9/12/08)](Added 1/12/05)]~~
- ~~27-12-02 Risk Scale Assessment (Amended 4/12/05)~~
- ~~27-12-03 Initial Interview (Added 1/12/05)~~
- ~~27-12-04 Conditions of Supervision Document and Request for Modification (Added 1/12/05)~~
- ~~27-12-05 Releasee's Report Document (Added 1/12/05)~~
- ~~27-12-06 Grievance Procedures for Offenders (Added 1/12/05)~~
- ~~27-12-08 Supervision Planning (Amended 4/12/05)~~
- ~~27-12-11 Guidelines for Monitoring Financial Obligations (Amended 4/12/05)~~
- ~~27-12-13 Community Service Work (Added 1/12/05)~~
- ~~27-12-14 Offender Travel (Amended 9/12/08)(4/12/05)]~~
- ~~27-13-01 Drug and Alcohol Testing of Offenders (Amended 4/12/05)~~
- ~~27-14-01 Interstate Compact (Amended 4/12/05)~~
- ~~27-15-01 Supervision Reporting Documents, Violations and Unusual Incidents (Added 1/12/05)~~
- ~~27-16-01 Search, Seizure, and Processing of Evidence [Search; Seizure; Chain of Custody; Disposal of Evidence] (Amended 12/9/08)(9/12/08)](4/12/05)]~~
- ~~27-17-01 Absconder Procedures (Amended 4/12/05)~~
- ~~27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 4/12/05)~~
- ~~27-19-01 Preliminary Revocation Hearing (Amended 4/12/05)~~
- ~~27-20-02 Prisoner Intake Notification (Added 1/12/05)~~
- ~~27-20-03 Prisoner Status Change (Added 1/12/05)~~
- ~~27-21-01 Apprehension of Probation and Parole Violators [Offenders] (Amended 12/9/08)(9/12/08)](4/12/05)]~~
- ~~27-23-01 In-state Transfer (Added 1/12/05)~~
- ~~27-24-01 Releasing Offender from Active Supervision (Added 1/12/05)~~
- ~~27-24-02 Reinstatement of Offenders to Active Supervision (Added 1/12/05)~~
- ~~27-26-01 Assistance to Former Offenders and Dischargees (Amended 2/13/06)~~
- ~~27-30-01 Sex Offender Registration (Amended 12/9/08)(9/12/08)](2/13/06)]~~
- ~~27-30-02 Sex Offender Supervision (Amended 12/9/08)(9/12/08)](Conditional Discharge of Sex Of-~~

- 27-30-03 fenders (Added 1/12/05)
- 27-31-01 Supervision: Sex Offenders (Added 1/12/05)
- 27-31-01 Use of Chemical Agents in Probation and Parole (Added 1/12/05)
- 27-31-02 Critical Incident Reporting (Added 1/12/05)
- 27-32-01 Student Intern Program (Amended 12/14/05)
- 27-32-02 Community Based Volunteer Citizen Involvement (Amended 2/13/06)
- 28-01-01 Probation and Parole Investigation Reports, Introduction, Definitions, Confidentiality, Timing, and General Comments (Amended 4/12/05)
- 28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Added 1/12/05)
- 28-01-03 Presentence, Postsentence, Supplemental and Partial Investigations (Added 1/12/05)
- 28-01-08 Probation and Parole Investigation Reports, Partial Investigation Reports and Submissions Schedule (Amended 4/12/05)
- 28-01-09 Release of Information of Factual Content on Presentence or Postsentence Investigation Documents (Added 1/12/05)
- 28-03-01 Parole Planning, investigation request, halfway houses, Parole Officer to monitor employment search and sponsorship (Amended 4/12/05)
- 28-03-02 Expedient Release Parole Planning investigative request (Added 1/12/05)
- 28-04-01 Furlough Verifications (Added 1/12/05)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [Office of Legal Services,] 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, [Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, (502) 564-2024, fax (502) 564-6494.] Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA THOMPSON, Commissioner

APPROVED BY AGENCY: September 10, 2008

FILED WITH LRC: September 12, 2008 at 4 p.m.

CONTACT PERSON: Amy Barker, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Carriers  
(As Amended at ARRS, December 9, 2008)**

**601 KAR 1:040. Application for operating authority and registration of motor carriers.**

RELATES TO: KRS [Chapter 281,] 281.014, 281.610, 281.615, 281.618, 281.619, 281.620, 281.625, 281.632, 281.637, 281.650, 281.655, 281.660, 281A.010(8), 49 C.F.R. Part 367, 49 U.S.C. 14504a

STATUTORY AUTHORITY: KRS 281.600(1), 281.620(1), 281.752[, 49 C.F.R. Part 367], 49 U.S.C. 14501

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600(1) authorizes the Transportation Cabinet to regulate motor carriers. This administrative regulation establishes[describes] the application procedure for intrastate operating authority in the Commonwealth and the registration procedure for interstate motor carriers operating in Kentucky pursuant to authority granted by the United States Department of Transportation.

Section 1. Kentucky Intrastate Passenger or Household Goods Authority. (1)(a) An application for operating authority to engage in Kentucky intrastate commerce relating to the transportation of persons, except for charter bus transportation, or household goods shall be made on the following appropriate forms:

1. Transportation Cabinet form TC 93-10E, Application for Operating Authority, Household Goods[, revised April 1999];

- 2. Transportation Cabinet form TC 93-11E, Application for Operating Authority, Disabled Persons Carrier[, revised April 1999];
- 3. Transportation Cabinet form TC 93-12E, Application for Operating Authority, Bus and Airport Shuttle, [revised April 1999];
- 4. Transportation Cabinet form TC 93-13E, Application for Operating Authority, City Limousine and, Taxicab[Taxi, revised April 1999]; or
- 5. Transportation Cabinet form TC 93-15E, Application for Operating Authority, County Limousine and, Taxicab[Taxi revised April 1999].

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) All applications and exhibits shall be filed with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) If the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application.

(b) This certification shall not be more than thirty (30) days old when[at the time] the application is submitted to the Transportation Cabinet.

(c) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4)(a) An application shall be sworn to by the applicant or a responsible official acting for the applicant.

(b) A hearing shall not be called or authority issued upon an incomplete application.

Section 2. Temporary Authority Applications. (1)(a) An application for temporary authority shall be made to the Transportation Cabinet by petition.

(b) The petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought.

(c) All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated.

(d)1. The applicant shall have the burden of proof in showing that any existing carriers with authority are not capable of meeting the need for service.

2. In lieu of meeting this burden, the applicant may file a waiver from each carrier authorized to serve the area sought or any part thereof in the form of a letter from each carrier waiving any objection to the temporary grant of authority.

(2) There shall also be filed with the petition a verified statement. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

(d) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;

(e) A statement of when the transportation service is needed and the reasons why the need is immediate and urgent;

(f) An estimate of how long the need for the transportation service will continue and a statement that the person making the supporting statement would support a permanent service application;

(g) A statement of the consequences if this transportation service is not made available; and

(h) A statement of incidents where efforts have been made to obtain the service from existing motor carriers and the:

1. Dates[dates] and results of these efforts;

2. Name[name] and address of all existing carriers who have either failed or refused to provide the service; and

3. Reasons[the reasons] given for the failure or refusal.

(3) The department may issue temporary authority without following any of the requirements listed in subsection (2) of this section[above] if one (1) of the following conditions exists:

(a) There are no existing carriers with authority within the scope and area of the application;

(b) All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;

(c) There are unusual and emergency conditions; or

(d) The application is for temporary approval under KRS 281.632(2).

(4) If no application for corresponding permanent authority is made, an application for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1)(a) An application for approval to transfer a certificate or permit issued by the Transportation Cabinet authorizing Kentucky intrastate commerce shall be accompanied by a filing fee of twenty-five (25) dollars.

(b) The application shall be made on "Application for Approval of Transfer of Certificate or[of] Permit", form TC 93-17E[-, effective April 1997].

(c) All applications and exhibits shall be filed with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) If[When] the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be more than thirty (30) days old when[at the time] the application is submitted to the department.

(b) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3)(a) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010.

(b) An application shall be sworn to by the applicant or a responsible official acting for the applicant.

(c) A hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

Section 4. Interstate Operating Authority - [For-hire] Motor Carriers. (1) 49 U.S.C. 14504a, the Unified Carrier Registration Act of 2005, [49 C.F.R. Part 367 revised October 1, 2001,] shall govern the registration of [the for-hire] motor carriers which meet the following criteria:

(a) 1. Those whose principal place of business is Kentucky; or  
2. Those who selected Kentucky as their base state pursuant to the Unified Carrier Registration Act of 2005, 49 U.S.C. 14504(a)(2); and

(b) Those which are operating in interstate commerce.

(2) The Unified Carrier Registration Agreement[(UCRA)]["Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993] shall govern the procedures of the Department of Vehicle Regulation in the registration of [for-hire] motor carriers operating in interstate commerce.

(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 C.F.R. Part 367.

(4) The [Kentucky]fee for the issuance of the registration[receipt] required under the Unified Carrier Registration Agreement[(UCRA)] shall be the fee established in 49 C.F.R.

367.20[by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle].

Section 5. [Contract Bus Carrier Permit; Intrastate. (1) Each application for authority as an intrastate contract bus carrier shall include two (2) copies of the contract under which the applicant desires to operate.

(2) The contracts shall be executed by the applicant/buyer and seller or applicant and passenger, and shall set out:

(a) The rates applicable;

(b) The extent and scope of the activity covered by the contract; and

(c) The minimum number of persons to be transported.

(3) Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(4) At least one (1) of the contract copies shall have original signatures.

(5) The extent of the authority of the contract carrier permit shall be:

(a) Limited to the scope of the contract on file with the department; and

(b) Made a part of the permit.

(6)(a) If the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.

(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.

Section 6.[Charter Bus Applications. (1) An application for operating authority as a charter bus operator pursuant to KRS 281.637 shall be made on form TC 95-308E, [93-20] "Application for Charter Bus Operating Authority".

(2) In accordance with KRS 281A.010(8)(d), a charter bus shall be considered to be a commercial motor vehicle as defined by KRS 281A.010(8) except that it shall be designed to transport seventeen (17) or more persons, including the driver.

(3) Each application shall include a filing fee of twenty-five (25) dollars.

(4) The applicant shall certify knowledge of and compliance with 601 KAR 1:005, Sections 2, 3, (1)(b) and 4 and with the provisions of KRS Chapter 281A relating to commercial drivers licenses.

(5) The applicant shall be required to file evidence of insurance as required by[in] KRS 281.655(4).

(6)(a) If an applicant for a charter bus certificate has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier a registration receipt authorizing charter bus operations between all points and places in Kentucky.

(b) The carrier shall keep a copy of this receipt in each vehicle operating pursuant to this authority.

Section 6.[7.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form TC 93-10E, "Application for Operating Authority, Household Goods", July 2006[-, revised April 1999];

(b) Form TC 93-11E, "Application for Operating Authority, Disabled Persons Carrier", July 2006[-, revised April 1999];

(c) Form TC 93-12E, "Application for Operating Authority, Bus and Airport Shuttle", July 2006[-, revised April 1999];

(d) Form TC 93-13E, "Application for Operating Authority, City Limousine and Taxi", July 2006[-, revised April 1999], revised April 1999;

(e) Form TC 93-15E, "Application for Operating Authority, County Limousine and Taxi", July 2006[-, revised April 1999];

(f) Form TC93-17E, "Application for Approval of Transfer or Lease of Certificate or Permit", July 2006[Application for Charter Bus Operating Authority", form TC 93-20, revised December 2001];

(g) Form TC 95-308E, "Application for Charter Bus Operating Authority", September 2002 [Procedure Manual for Single State Registration System", July 12, 1993 edition]; and

(h) "Unified Carrier Registration Agreement", approved by the Unified Carrier Registration Board, June 11, 2007[49 C.F.R. Part 367 revised October 1, 2001, prescribes standards for registration with states].

(2) This[The] material[in-subsection (1)(a) through (e) and (h) of this section] may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, 200 Mero Street[Office of General Counsel, Hearings Section, State Office Building, 501 High Street,] Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

[(3) The material incorporated in subsection (1)(f) and (g) of this section may be inspected, copied or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Third Floor of the State Office Building, 501 East High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

JOSEPH PRATHER, SECRETARY

APPROVED BY AGENCY: September 15, 2008

FILED WITH LRC: September 22, 2008 at 3 p.m.

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

**EDUCATION CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at ARRS, December 9, 2008)**

**704 KAR 3:390. Extended school services.**

RELATES TO: KRS 158.070, 158.6459

STATUTORY AUTHORITY: KRS 156.070, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.070(8) requires schools to provide continuing education [beyond the minimum school term] for students who[ia] need additional instructional time to achieve the outcomes defined in KRS 158.6451. KRS 158.070(8)[of extended services and] requires the Kentucky Board of Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide these services and for waivers to deliver those services during the regular school day. [KRS 158.070(8) also requires the Kentucky Board of Education to establish criteria for waivers by which programs may be scheduled on a limited basis during the regular school day.] This administrative regulation established requirements for extended school services[, regardless of when during the school day or calendar they are delivered].

Section 1. Definitions. (1) "A5 program" means an alternative program, which is a district-operated and district-controlled facility with no definable attendance boundaries, that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court ordered placements). Students enrolled in A5 program typically include:

- (a) Actual dropouts returning to an alternate educational environment;
- (b) Potential or probable dropouts;
- (c) Drug abusers;
- (d) Physically abused students;
- (e) Discipline problem students;
- (f) Nontraditional students (e.g., students who have to work during the school day); or
- (g) Students needing treatment (e.g., emotional or psychological).

(2) "A6 program" means that unique line for a school that starts in the biennium ending with the school year 2009-2010 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014, with the calculated points defining this line rounded to the nearest tenth. If a school's baseline is above eighty

(80), the assistance line means a horizontal line at eighty (80) minus one (1) standard error of measurement.

(3)"Diagnostic assessment", "formative assessment", "interim assessment", or "benchmark assessment" means an"Diagnostic Assessment," which may also be called "formative or interim/benchmark assessment." means] assessment that is used to indentify gaps in student learning in specific content areas.

(4)[(2)] "Extended school services" or "ESS" means instructional and support services provided:

(a) By school districts for students who are unlikely to achieve proficiency, transition to the next level of learning successfully, or be able to meet the [need additional time to achieve] academic expectations in 703 KAR 4:060 without additional time or differentiated opportunity to learn; [and]

(b) at times separate from the regular school day, regular school week, or the minimum school term unless a district's request for a waiver meets the criteria established in Section 7 of this administrative regulation and has been approved by the Commissioner of Education; and

(c) As interventions included in the student's intervention plan, in primary through grade 5, or in the student's Individual Learning Plan, in grades 6 through 12, to ensure that the student remains in school and is on track to meet goals for postsecondary education and career after high school.

(5)[(3)] "Formative assessment" means the process used by teachers and students during instruction that provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended learning outcomes.

(6)[(4)] "Individual Learning Plan" means a plan to help students grades 6 through 12 better focus their coursework on individual goals as they prepare for postsecondary studies and careers.

(7)[(5)] "Interim or benchmark assessments" means assessments that are administered at the school or district level at prescribed intervals and aimed at collecting student instructional data.

(8)[(6)] "Summative assessment" means tests given at the end of instruction to determine what was learned.

(9)[(7)][(2)] "Support services" means noninstructional components of a program that:

(a) Are provided to enable the student to realize the benefits of the instructional program; and

(b) May include transportation, instructional materials or supplies, student snacks, school-based counseling, community based mentoring, academic advising, parent training for follow through, or referrals for social, health or financial assistance through appropriate service agencies.

Section 2. Instructional Program. (1) The major emphases of extended school services shall be to provide additional time and differentiated opportunity to learn in which rigorous academic and enrichment content are aligned with individual student needs to improve[:

(a) To enhance] the present level of performance [of students who are having difficulty] in one (1) or more content areas. Priority for ESS services shall be placed on designing and delivering services to students at academic risk with specific objective that students are able to:

(a) Progress from grade to grade with their cohort;

(b) Exit elementary school ready to meet academic expectations at the middle school level;

(c) Exit middle school ready to meet academic expectations at the high school level; and

(d) Exit high school ready to meet academic expectations of postsecondary education and the workplace, with particular emphasis on literacy and mathematics. [To provide extended programming for students who have been retained or who are at risk of being retained in a class or grade or of failing to graduate on time or dropping out without additional assistance; and

(e) To close the achievement gap of low-performing students so that the students will perform successfully in the instructional program appropriate to their age ranges.]

(2) The extended school services provided to a student shall be planned, documented and evaluated through the intervention plan, at primary through grade 5, or in the student's Individual

Learning Plan, in grades 6 through 12. The instructional program for extended school services shall include:

(a) Diagnostic assessments to determine areas of highest academic need of the individual student[A method to assess the priority educational needs of each individual student and to determine the academic expectations to be exhibited by the student at the end of the program];

(b) Development of goals, in consultation with classroom teachers, for eliminating the identified academic need, including timelines and specific measurable outcomes;

(c) Formative and summative assessments to facilitate student progress and to determine if[when] the student has achieved the learning goals of the intervention plan;

(d) Instructional strategies that are varied and that do not replicate practices that have proven to be ineffective for the student in the traditional classroom;

(e) A plan for collaboration and consistent use of interventions among the teachers supporting the student in core academic classes and those providing supports through extended school services;

(f) Counseling and academic advising to remove barriers to achievement; and[.]

(g) Regular communication with the parent or guardian.[An appropriate educational program designed for the individual student which assists the student in mastering the academic expectations within the timelines specified by the program;

(c) An ongoing method of informal and formal assessment to document the student's progress toward mastery of the academic expectations;

(d) A schedule of services which shall be of the duration and regularity necessary to allow mastery of the academic expectations within a reasonable and projected timeline;

(e) Teaching techniques that provide support and continuity relative to the regular school program; and

(f) Varied instructional approaches which may include:

1. Tutorial instruction;

2. A modified approach to reteaching to ensure needs of the individual students are met;

3. Diagnostic or prescriptive services;

4. Computer-assisted instruction; or

5. Counseling if needed to assist the student in overcoming social or behavioral problems which interfere with the student's academic success.]

(3) The instructional program may utilize a variety of scheduling models including:

(a) Programs operated during the regular school day as provided in Section 7 of this administrative regulation;

(b) Extended day programs which are scheduled any time outside of the regular school day [and which may include a night program];

(c) Night programs;

(d)[(b)] Saturday programs [which operate for a full or half day over a specified period of time];

(e)[(c)] Summer programs [which operate a full or half day during the months of June, July or August]; or

(f)[(d)] Flexible school calendars which allow eligible students to attend school for a longer period of time than other students.[- or

(e) Programs operated during the regular school day as approved by the Commissioner of Education and that meet the criteria provided in Section 7 of this administrative regulation.]

(4) The district's comprehensive school improvement plan shall include opportunities to collaborate with business, colleges, and community organizations to provide services and advising in off-campus locations as part of or aligned with the extended school services programs[examination of opportunities to utilize partnerships with businesses, colleges, and community organizations to provide supplemental instructional services and advising in nonschool locations as part of or aligned with the extended school services programs].

(5) Extended school services programs shall not supplant[replace or substitute for the] instructional time of the regular program, but shall extend time and provide differentiated opportunity to learn[provide additional instructional time] in a [targeted content area and] specific area of academic need.

(6)[(5)] Certified staff, including administrators, teachers, and advisors, shall plan, deliver, and evaluate extended school services[provide] instruction and supports in collaboration as part of a student's Individual Learning Plan (ILP)[or regularly supervise a noncertified tutor including a peer tutor].

(7)[(6)] Teachers providing instruction in extended school programs [which are offered for academic credit for purposes of promotion or graduation] shall meet the same professional qualifications as teachers who are employed in the regular school program.

(8) Teachers providing instruction in extended school programs shall be provided with professional development on effective instructional strategies for meeting the needs of at-risk students and use of formative assessment strategies to monitor progress.

(9) Certified staff shall supervise noncertified tutors.

(10)[(7)] Extended school services shall be provided to eligible students who are in the first year of the primary school program through the twelfth grade. Students shall be eligible to receive these services until they graduate from the twelfth grade or become twenty one (21) years of age, whichever comes first.

Section 3. Student Selection. [Selection of pupils to receive extended school services shall be as follows:](1) Each school district shall select pupils as described in Section 2(1) of this administrative regulation who need additional instructional time [to attain academic expectations]. A student shall not be selected or assigned to receive extended school services for disciplinary purposes or for any kind of in-school suspension. The needs of students in A5 and A6 programs[- as defined in 703 KAR 5:004.] shall be considered in the selection process.

(2)[(a)] Within its scope of authority, a local board of education or school council may mandate the participation of eligible students to extended school services through the adoption of a written policy, which shall describe all conditions under which attendance will be required and shall provide a description of any exceptions permissible under the policy.

(3)[(b)] Conditions for attendance for extended school service shall[may] include:

(a) Identification of the learning goals and benchmarks that, if[when] achieved, indicate that the student may exit the extended school services program;

(b)[1. The characteristics of the students who will be required to attend;

2. A description of the criteria by which they may exit the extended school program or may no longer be required to attend;

3. The conditions under which a student's absence may be considered excused or unexcused[targeted student may be excused from attendance]; and[or]

(c)[4. The arrangements for transporting the students mandated to attend.

(4)[(e)] The local school board shall provide notice of the policy in the district's annual extended school services program report which is submitted at the same time as the district's comprehensive school improvement plan.

(5) One (1) or more of(3) In assessing a student's need for extended school services, the schools shall consider the student's performance in:

(a) Academic skill areas for a single subject or single class, application of those skills to everyday life situations, and integration of skills and experiences to acquire new information;

(b) School attendance if it negatively affects academic performance;

(c) Patterns of promotion or retention;

(d) Physical and mental readiness for learning; and

(e) If applicable, readiness for transition to work, postsecondary education or the military.

(4)] the following [methods of documentation] shall be used to determine[verify] which students shall be determined eligible and in greatest need of extended school services:

(a) Teacher recommendation [based upon classroom observation and anecdotal records or parent recommendation];

(b) Academic performance data, including diagnostic, formative, interim, benchmark, or[interim and benchmark assessments, and] summative assessments;



~~(c) Student performance on high school, college, or~~ workforce readiness assessments required by KRS 158.6459; or  
~~(d) based upon analysis of student work and formal and informal measurements of progress; or~~

~~(e) Behavioral and developmental progress as documented in formal and informal assessments and reports.~~

~~(6) [(5)] Local school boards shall approve and disseminate procedures whereby pupils who have a greater need as~~ determined by the eligibility criteria shall be referred and selected first to receive extended school services. These procedures shall not exclude students who have greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

(7) A local school district shall solicit input from parents and the community to identify potential barriers to participation. Identified barriers shall be addressed through engagement with community partners or off-campus locations [recreation] of after school, weekend, or evening services.

~~(8) [(6)] Schools shall inform parents and guardians of extended school services [which will be offered in the school setting] including:~~

~~(a) The rationale for offering extended school services, including data about educational achievement and further earnings, opportunities for postsecondary education and training, and consequences of failure to achieve the high school diploma; [A general notification which describes the nature of the services to be offered including the opportunities for maintenance of performance, prevention of failure and reduction of academic deficiencies;]~~

~~(b) A specific notification to parents or guardians of their child's eligibility to receive or assignment to extended school services, including the manner in which a personalized intervention plan and goals will be included as part of the student's Individual Learning Plan to help ensure that the student is able to achieve the student's academic and career goals; [A school shall maintain documentation of continuing and appropriate efforts to gain parental approval and support for students to attend the program offered outside of the school day]; and~~

~~(c) Written procedures for parents or guardians to request reconsideration of their children's identification or lack of identification of eligibility for extended school services [outside of the school day].~~

Section 4. Funding. (1) Each school district shall be eligible to receive a grant award from available funds to provide extended school services. Available funds shall be the amount of the total appropriation less two (2) percent for state administrative costs.

(2) The commissioner of education shall determine the amount of the grant award for which each school district is eligible based upon the following division of funds:

(a) One-half (1/2) of the total funds shall be distributed based on the most current average daily attendance (ADA);

(b) One-sixth (1/6) of the total funds shall be distributed based on the most current rates of economic deprivation (ED);

(c) One-sixth (1/6) of the total funds shall be distributed based on the most current dropout rates (DR); and

(d) One-sixth (1/6) of the total funds shall be distributed based on the most current CATS Academic Indices (AI).

(3) Actual district allocations shall be calculated as follows:

(a) Determine the state total for ADA by summing the ADA for all districts;

(b) Determine the percentage each district shall receive for ADA by dividing the district's ADA by the state total ADA. The resulting percentage (%) multiplied times the total funds available for average daily attendance shall equal [equals] the amount the district shall receive for ADA;

(c) State totals for ED, AI, and DR shall be calculated as follows:

1. The state total for ED shall be the sum of all districts' ED quotients. Each district's ED quotient shall be calculated by multiplying the district's ED times the district's ADA;

2. The state total for AI shall be the sum of all districts' AI quotients. Each district's AI quotient shall be calculated by subtracting the AI from 100 and then multiplying the difference by the district's ADA; and

3. The state total for DR shall be the sum of all district's DR quotients. Each district's DR quotient shall be calculated by multiplying the district's DR times the district's ADA;

(d) Determine the percentage each district shall receive for ED by multiplying the district's ED times the district's ADA and divide the result by the state's total ED, as determined by paragraph (c)1 of this subsection. The resulting percentage (%) multiplied times the total funds available for economic deprivation shall equal the amount the district shall receive for ED;

(e) Determine the percentage each district shall receive for AI by multiplying the district's AI times the district's ADA and divide the result by the state's total AI as determined by paragraph (c)2 of this subsection. The resulting percentage (%) multiplied times the total funds available for academic indices shall equal the amount the district shall receive for AI;

(f) Determine the percentage each district shall receive for DR by multiplying the district's DR times the district's ADA and divide the result by the state's total DR as determined by paragraph (c)3 of this subsection. The resulting percentage (%) times the total funds available for dropout rate shall equal the amount the district shall receive for DR; and

(g) Sum the district's portions for ADA, ED, AI, and DR to determine the district's total ESS allocation.

(4) To ensure the opportunity for all school districts to provide effective extended school services of adequate size and scope, a school district shall not receive a grant of less than \$15,000.

(5) Grant awards shall be made to each school district upon approval by the commissioner of education of an application as prescribed in Section 5 of this administrative regulation. Regular grant funds shall be available for use by school districts for fifteen (15) months through September 30 of the last year of the grant period. All services shall be delivered by September 30 of the last year of the grant period and all expenditures shall be paid for extended school services by December 30 of the last year of the grant period.

~~(6) [(a) Funds received for extended school services shall be expended for instructional and support services necessary to provide an effective program.~~

~~(b) These services shall include salaries of personnel.~~

~~(c) Transportation and staff development related to the provision of extended school services shall be permissible support services. Support may include expenditures for field trips which shall not exceed two (2) percent of the district's allocation for students served by the extended school services program.~~

~~(d) Funds for extended school services shall not be used for capital outlay or indirect costs.~~

~~(e) School districts shall be authorized to enter into contractual arrangements if needed to provide comprehensive extended school service programs.~~

~~(f) The funds may be expended for instructional materials and supplies if a need is demonstrated and the district does not have the supplies and materials available.~~

~~(g) Part of these funds may be used for up to three (3) percent of the district's allocation for operation of plant for a summer extended school services program which shall be prorated if other programs are taking place at the same time and place.~~

~~(h) Part of these funds may be used for administrative costs which shall not exceed five (5) percent of the district's allocation.~~

~~(i) Students shall not receive monetary compensation to attend the extended school services program.~~

~~(j) School districts shall have on file written criteria for the selection of personnel employed in extended school services and ensure staffing decisions are made to best meet the needs of students.~~

~~(7) Financial records for extended school services shall be maintained by each school district and shall be submitted to the Department of Education via the state technology system.~~

Section 5. Requesting Funds. (1) The request for the use of extended school services funds shall be submitted as part of the district's comprehensive ~~[district's]~~ improvement plan.

(2) (a) District applications for funds shall be approved by the commissioner of education prior to the encumbrance or expenditure of funds for extended school services by any school district,

including the contracting for personnel for extended school services.

(b) Approval of programs as described in each district's comprehensive improvement plan, required program reports, and request for a waiver for alternative service delivery shall be based on this administrative regulation and KRS 158.070.

Section 6. Program Evaluation. School districts providing extended school services shall submit to the Department of Education:

(1) Student data through the student information system and the Individual Learning Plan [STI-Program] at the end of the regular school term and any summer term in which funds are expended for extended school services;

(2) ~~[a separate written]~~ Evaluation and evaluative data as approved in the waiver application, if the school district receives approval to implement extended school services during the regular school day; and

(3) ~~[Comparative]~~ Data relative to the effectiveness of the extended school service program, including: [regular extended school service program and the daytime extended school service program including:]

(a) Pre- and post student qualitative and quantitative performance data;

(b) Student attendance at extended school services; and

(c) Promotion and graduation data ~~[resulting from participation in extended school services]~~.

Section 7. Waiver for Alternative Service Delivery. The commissioner of education may consider a request for a waiver to operate a program during the school day or to use an alternative delivery format. A request for waiver shall include:

(1) A rationale describing why a daytime program is needed ~~[in addition to the regular extended school services program, including specific data and documentation of previous efforts to serve individual students during the regular extended school program]~~;

(2) A description of the instructional program that meets the criteria established in Section 2 of this administrative regulation ~~[and includes a schedule that ensures each participating student receives additional instructional time during the school day without missing instruction in the same or other assessed content area. The regular program teacher in collaboration with the teacher delivering extended school services shall set measurable goals and objectives for student and teacher performance, including formal and informal assessments that extend beyond classroom grades and CATS scores]~~;

(3) A description of the student selection process that meets the criteria in Sections 2 and 3 of this administrative regulation; and

(4) Detailed, accurate budget using correct MUNIS codes. A person compensated with ESS funds shall devote his or her time to delivering ESS services during the time period for which he or she is being compensated with ESS funds; ~~and~~

(5) ~~Specific information related to program evaluation described in Section 6 of this administrative regulation. It shall include a continuous monitoring and evaluation plan to ensure the needs of individual learners are met]~~.

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).

JON E. DRAUD, Commissioner

JOSEPH E. BROTHERS, Chairperson

APPROVED BY AGENCY: October 14, 2008

FILED WITH LRC: October 15, 2008 at 8 a.m.

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## PUBLIC PROTECTION CABINET

### Department of Insurance

#### Division of Health Insurance Policy and Managed Care (As Amended at ARRS, December 9, 2008)

#### 806 KAR 17:081. Minimum standards for long-term care insurance policies.

RELATES TO: KRS 304.1-040, 304.2-310, 304.6-070, 304.6-130-180, 304.9-080, 304.12-020, 304.12-030, 304.12-130, 304.14-120(2), 304.14-600-304.14-644, 304.15-310, 304.15-315, [304.14-625, 304.18-110] 304.18-120, 304.18-127, 304.29-600, 304.32-290, 304.38-220, 26 U.S.C. 7702B, 42 U.S.C. 1395x(r), 45 C.F.R. 160.103

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-615, 304.14-620, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-615(1) requires the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for the manner, content, and sale of long-term care insurance policies. KRS 304.14-620 requires the Executive Director of Insurance to promulgate administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations ~~[which he deems]~~ necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations ~~[which he deems]~~ necessary for the proper administration of KRS Chapter 304.38. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the Department. This administrative regulation establishes minimum standards for long-term care insurance.

Section 1. Definitions. (1) "Applicant" is defined in KRS 304.14-600(3).

(2) "Attained age rating" means a schedule of premiums starting from the issue date which increases age at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50).

(3) "Certificate" is defined in KRS 304.14-600(4).

(4) "Chronically-ill individual", pursuant to 26 U.S.C. 7702B(c)(2):

(a) Means any individual who has been certified by a licensed health care practitioner as:

1. Being unable to perform without substantial assistance from another individual at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or

2. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; and

(b) Shall not include an individual otherwise meeting these requirements unless within the preceding twelve month period a licensed health care practitioner has certified that the individual meets these requirements.

(5) "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(6) "Cold lead advertising" means the use of any method of marketing which fails to disclose in a clear, easy to notice manner that a purpose of the method of marketing is solicitation of insurance and contact will be made by an insurance agent or insurance company.

(7) "Commissioner" means the Commissioner of Insurance.

(8) "Denied claim" means the insurer refuses to pay a claim for any reason except for failure to meet the waiting period or due to an applicable preexisting condition.

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(9) "Department" means the Department of Insurance.

(10) "Exceptional increase" means a premium rate increase filed by an insurer as exceptional, which the commissioner determines is necessary and justified due to:

(a) Changes in Kentucky laws or administrative regulations applicable to long-term care coverage; or

(b) Increased and unexpected utilization that affects the majority of insurers of similar products.

(11) "Group long-term care insurance" is defined in KRS 304.14-600(5).

(12) "High pressure tactics" means employing any method of marketing that may affect or induce the purchase of insurance through force, fright, explicit or implied threat, or create undue pressure to purchase or recommend the purchase of insurance.

(13) "Incidental" is defined in KRS 304.14-600(1).

(14) "Individually-identifiable information" means personal information gathered in connection with an insurance transaction from which judgment may be made regarding an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or other personal characteristics including an individual's name, address, and medical record information.[:]

(15) "Insurer" is defined in KRS 304.1-040.

(16) "Interlocking directorates" means two (2) separate boards of directors that have at least one (1) director in common.

(17) "Kentucky insurance code" means the statutes referenced in KRS 304.1-010 and the administrative regulations established in KAR Title 806.

(18) "Licensed health care practitioner" means a physician as defined in 42 U.S.C. 1395x(r), registered nurse, licensed social worker, or other individual who meets the requirements of 26 U.S.C. 7702B(c)(4).

(19) "Limited distribution channel" means a discrete entity, including a financial institution or brokerage, through which a specialized product is made available to a purchaser other than the general public.

(20) "Long-term care benefits classifications" means:

(a) Institutional long-term care benefits only;

(b) Noninstitutional long-term care benefits only; or

(c) Comprehensive long-term care benefits.

(21) "Long-term care insurance" is defined in KRS 304.14-600(2).

(22) "Maintenance or personal care services" means care for which the primary purpose is the provision of needed assistance with a disability as a result of which the individual is a chronically-ill individual, including protection from threats to health and safety due to severe cognitive impairment.

(23) "Managed-care plan" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

(24) "Misrepresentation" means misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(25) "Policy" is defined in KRS 304.14-600(6).

(26) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(27) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means:

(a) An individual or group insurance contract that meets the requirements of 26 U.S.C. 7702B(b) as follows:

1. The insurance protection provided under the contract shall be limited to coverage of qualified long-term care services and the contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

2.a. The contract shall not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, 42 U.S.C. 1395 et seq., or would be reimbursable except for the application of a deductible or coinsurance amount;

b. The requirements of this subparagraph shall not apply to expenses that are reimbursable under 42 U.S.C. 1395 et seq. as a secondary payor; and

c. The contract shall not fail to satisfy the requirements of this

subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

3. The contract shall be guaranteed renewable, as established in 26 U.S.C. 7702B(b)(1)(C);

4. The contract shall not provide for a cash surrender value or other money that may be paid, assigned, pledged as collateral for a loan, or borrowed except as required in subparagraph 5 of this paragraph;

5. Refunds of premiums and policyholder dividends or similar amounts under the contract shall be applied as a reduction in future premiums or to increase future benefits, except that a refund upon death of the insured, a complete surrender, or cancellation of the contract shall not exceed the aggregate premiums paid under the contract; and

6. The contract shall meet the consumer protection provisions as established in 26 U.S.C. 7702B(g); or

(b) The portion of a life insurance contract that:

1. Provides long-term care insurance coverage by rider or as part of the contract; and

2. Meets the requirements of 26 U.S.C. 7702B(b) and (e).

(28) "Qualified long-term care services" means services required in 26 U.S.C. 7702B(c)(1), including necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically-ill individual, and provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(29) "Similar policy forms" means:

(a) Long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered; or

(b) Certificates of groups, as identified in KRS 304.14-600(5)(a) similar to other comparable certificates of groups that meet the definition in KRS 304.14-600(5)(a) with the same long-term care benefit classifications.

(30) "Twisting" means knowingly making a misleading representation or incomplete or fraudulent comparison of insurance policies or insurers for the purpose of inducing, or tending to induce, a person to:

(a) Lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy; or

(b) Secure an insurance policy from another insurer.

Section 2. Policy Definitions. A long-term care insurance policy delivered or issued for delivery in Kentucky shall not include the following terms unless the terms are defined in the policy and the definitions satisfy the following requirements:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means that the individual is medically unstable and requires frequent monitoring by medical professionals, including physicians and registered nurses, in order to maintain health status.

(3) "Adult day care" means a program for four (4) or more individuals, of social- or health-related, or both, services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who may benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath, or in a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(6) "Continence" means the ability to maintain control of bowel and bladder function, or, if unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle, including a plate, cup, or table, or by a feeding tube or intravenously.

(9) "Hands-on assistance" means minimal, moderate, or maximal physical assistance without which the individual would not be able to perform the activity of daily living.

(10) "Home health-care services" means medical and nonmedical services, including homemaker services, assistance with activities of daily living, and respite care services, provided to ill, disabled, or infirmed persons in their residences.

(11) "Medicare" means:

(a) "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended;"

(b) "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof;" or

(c) Words similar to paragraph (a) and (b) of this subsection.

(12) "Mental or nervous disorder" means neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(13) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care", "intermediate care", "personal care", "home care", and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care shall be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of bed, chair, or wheelchair.

(17)(a) "Skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", "assisted living facility", "home care agency", "specialized care providers", and other providers of services shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services; and

(b) If the definition requires that the provider be appropriately licensed, certified, or registered, the definition shall also include the requirements that a provider shall meet in lieu of licensure, certification or registration if the state in which the service is provided:[:]

1. Does not require a provider of these services to be licensed, certified or registered; or

2. Licenses, certifies or registers the provider of services under another name.

Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in an individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 6 of this administrative regulation.

(a) A long-term care insurance policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" shall **not be used unless**[be used only if]:

1. The insured has the right to continue the long-term care insurance in force by the timely payment of premiums; and

2. Except for a revision of rates on a class basis, the insurer has no unilateral right to make a change in a provision of the policy or rider while the insurance is in force, and shall not decline to renew.

(c) The term "noncancellable" shall be **not be used unless**[be used only if] the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during the period in which the insurer has no right to unilaterally make a change in a provision of the insurance or in the premium rate.

(d) The term "level premium" shall **not be used unless**[only be used if] the insurer does not have the right to change the premium.

(e) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, pursuant to 26 U.S.C. 7702B(b)(1)(C).

(2)(a) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as long-term care insurance if the policy limits or excludes coverage by type of illness, treat-

ment, medical condition, or accident, except as follows:

1. Preexisting conditions or diseases in accordance with KRS 304.14-615(3)(d);

2. Mental or nervous disorders except for Alzheimer's disease;

3. Alcoholism and drug addiction;

4. Illness, treatment, or medical condition as a result of:

a. War or act of war, whether declared or undeclared;

b. Participation in a felony, riot, or insurrection;

c. Service in the armed forces or auxiliary units;

d. Suicide, if sane or insane, attempted suicide, or intentionally self-inflicted injury; or

e. Except for fare-paying passengers, aviation;

5. a. Treatment provided in a government facility, unless otherwise required by law;

b. Services for which benefits are available under:

(i) Medicare or other governmental program, except Medicaid;

(ii) A state or federal workers' compensation;

(iii) Employer's liability or occupational disease law; or

(iv) A motor vehicle no-fault law;

c. Services provided by a member of the covered person's immediate family; and

d. Services for which no charge is normally made in the absence of insurance;

6. Expenses for services or items available or paid under another long-term care insurance or health insurance policy; **and**

7. If a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses:[:]

a. Are reimbursable under 42 U.S.C. 1395 et seq.; or

b. Would be reimbursable except for the application of a deductible or coinsurance amount;

(b)1. This subsection is not intended to prohibit the delivery or issue for delivery of a long-term care policy with exclusions and limitations by type of provider; and

2. A long-term care insurer shall not deny a claim because services are provided in a state other than the state of policy issue under the following conditions, if the state other than the state of policy issue:

a. Does not have the provider licensing, certification, or registration required in the policy and the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or

b. Licenses, certifies or registers the provider under another name; and

(c) This subsection is not intended to prohibit the delivery or issue for delivery of a long-term care policy with territorial limitations.

(3) Extension of benefits.

(a) Termination of long-term care insurance shall be without prejudice to any; benefits payable for institutionalization if the institutionalization:

1. Began while the long-term care insurance was in force; and

2. Continues without interruption after termination.

(b) The extension of benefits beyond the period the long-term care insurance was in force may be:

1. Limited to the:

a. Duration of the benefit period, if any; or

b. Payment of the maximum benefits; and

2. Subject to:

a. Any policy waiting period; and

b. All other applicable provisions of the policy.

(4) Continuation or conversion. Group long-term care insurance issued in Kentucky on or after July 15, 2002 shall provide a covered individual with a basis for continuation or conversion of coverage.

(a) A basis for continuation shall be identified as a policy provision, which provides for continued coverage under the existing group policy if the coverage would otherwise terminate and be subject to the continued timely payment of premium when due.

1. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy; and

2. The commissioner shall:

a. Make a determination as to the substantial equivalency of

benefits as identified in subparagraph 1 of this paragraph; and

b. In making the determination identified in clause a. of this subparagraph, take into consideration the differences between managed-care and nonmanaged-care plans, including:

- (i) Provider system arrangements;
- (ii) Service availability;
- (iii) Benefit levels; and
- (iv) Administrative complexity.

(b) A basis for conversion shall be identified as a policy provision, which provides that an individual shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability, if the:

1. Individual's coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class; and

2. Individual has been continuously insured under the group policy and any group policy which it replaced, for at least six months immediately prior to termination.

(c)1. A converted policy shall be an individual policy of long-term care insurance that provides benefits identical to or benefits determined by the commissioner to be substantially similar to or in excess of those provided under the group policy from which conversion is made.

2. If the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to the substantial similarity of benefits, shall take into consideration the differences between managed-care and non managed-care plans, including:

- a. Provider system arrangements;
- b. Service availability;
- c. Benefit levels; and
- d. Administrative complexity.

(d)1. No later than thirty-one (31) days after termination of coverage under the group policy, an individual who desires a converted policy shall:

- a. Make written application for the converted policy; and
- b. Pay the first premium that is due, if any. [.]

2. A converted policy shall be:

a. Issued effective on the day following date of termination of coverage under the group policy; and

b. Renewable annually.

(e) The premium for a converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy:

1. From which conversion is made unless the group policy from which conversion is made replaced previous group coverage; or

2. Replaced, if the group policy from which conversion is made replaced previous group coverage.

(f) Continuation of coverage or issuance of a converted policy shall be mandatory, except if:

1. Termination of group coverage resulted from an individual's failure to make a required payment of premium or contribution when due; or

2. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the date of termination of coverage:

a. Providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

b. The premium for which is calculated in a manner consistent with the requirements of paragraph (e) of this subsection.

(g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if:

1. The benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses; and

2. The converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) A converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(i) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(5) Discontinuance and replacement.

(a) If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to persons covered under the previous group policy on its date of termination; and

(b) Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:

1. Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

2. Vary or depend on the individual's:

- a. Health or disability status;
- b. Claim experience; or
- c. Use of long-term care services.

(6)(a) The premium charged to an insured for long-term care insurance shall not increase due to the:

1. Increasing age of the insured at ages beyond sixty-five (65);

or

2. Duration that the insured has been covered under the policy.

(b)1. The purchase of additional coverage shall not be considered a premium rate increase; and

2. For the calculation required under Section 25(6) of this administrative regulation, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(c)1. A reduction in benefits shall not be considered a premium change; and

2. for the calculation required under Section 25(6) of this administrative regulation, the initial annual premium shall be based on the reduced benefits.

(7) Electronic enrollment for group policies.

(a) A requirement that a signature of a group long-term care insurance insured be obtained by an agent or insurer shall be deemed satisfied if:

1. The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer;

2. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the:

- a. Accuracy, retention, and prompt retrieval of records; and
- b. Maintenance of the confidentiality of personally-identifiable information pursuant to 806 KAR 3:210, 3:220 and 3:230.

(b) A verification of enrollment information shall be provided to an enrollee.

(c) Upon request of the commissioner, an insurer shall make available records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

Section 4. Unintentional Lapse. An insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination.

1. An individual long-term care policy or certificate shall not be issued until the insurer has received from the applicant a written:

a. Designation of at least one (1) person, in addition to the applicant, who shall receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or

b. Waiver;

1. Dated and signed by the applicant; and

2. Electing not to designate additional persons to receive notice.

3. Designation shall not constitute acceptance of any liability of the third party for services provided to the insured.

4. The form used for the written designation shall provide

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space clearly designated for listing at least one (1) person.

5. The designation shall include each person's full name and home address.

6. If an applicant elects not to designate an additional person, the waiver shall contain the language as established in HIPMC-LTC-10.

7. The insurer shall notify the insured of the right to change a written designation, at least once every two (2) years.

(b)1. If a policy holder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the policy or certificate shall not be required to meet the requirements of paragraph (a) of this subsection until sixty (60) days after the policyholder or certificate holder is no longer on the payment plan.

2. The application or enrollment form for the policy or certificate shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium.

1. An individual long-term care policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and any person designated pursuant to paragraph (a) of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination.

2. Notice of lapse or termination shall:

a. Be given by first class U.S. mail, postage prepaid;

b. Not be given until thirty (30) days after a premium is due and unpaid; and

c. Be deemed to have been given as of five (5) days after the date of mailing.

(2) Reinstatement.

(a) In addition to meeting the requirements of subsection (1) of this section, a long-term care insurance policy or certificate shall include a provision for reinstatement of coverage:

1. When lapse occurs; and

2. If the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.

(b) The reinstatement of coverage option as identified in paragraph (a) of this subsection shall:

1. Be available to the insured if requested within five (5) months after termination; and

2. Allow for the collection of past due premium, if appropriate.

(c) The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria for cognitive impairment or loss of functional capacity as established in the policy and certificate.

Section 5. Required Disclosure Provisions. (1) Renewability.

(a) An individual long-term care insurance policy shall contain a renewability provision, which shall:

1. Be appropriately captioned;

2. Appear on the first page of the policy; and

3. State clearly that the coverage is guaranteed renewable or noncancellable.

(b) Paragraph (a) of this subsection shall not apply to a life insurance policy with a long-term care insurance rider:

1. Which does not contain a renewability provision; and

2. Under which the right to nonrenew is reserved solely to the policyholder.

(c) Except for a long-term care insurance policy for which an insurer does not have the right to change the premium, a long-term care insurance policy or certificate shall include a statement that premium rates may change.

(2) Riders and endorsements.

(a) Except for a rider or endorsement by which an insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, a rider or endorsement added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduces or eliminates benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) Except for increases in benefits or coverage that are required by the Kentucky insurance code, a rider or endorsement

shall be agreed to in writing and signed by the insured, if the rider or endorsement:

1. Is issued after the date of policy issue; and

2. Increases benefits or coverage with a concomitant increase in premium during the policy term.

(c) If a separate additional premium is charged for benefits provided in connection with a rider or endorsement, the premium charged shall be disclosed in the policy, rider, or endorsement.

(3) Payment of benefits. A long-term care insurance policy which provides payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include:

(a) A definition of these terms or words; and

(b) An explanation of these terms or words in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations, which apply to preexisting conditions, the limitations shall:

(a) Appear as a separate paragraph of the policy or certificate; and

(b) Labeled as Preexisting Condition Limitations.

(5) Other limitations or conditions on eligibility for benefits. Except for limitations or conditions prohibited in KRS 304.14-615(4)(b), a long-term care insurance policy or certificate containing a limitation or condition for eligibility shall:

(a) Provide a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate; and

(b) Label the paragraph as established in paragraph (a) of this subsection as "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of tax consequences. A disclosure statement, as identified in paragraph (a) of this subsection, shall be required for a life insurance policy which provides an accelerated benefit for long-term care.

(a) The disclosure statement shall:

1. Be required;

a. Upon application for the policy or rider; and

b. When the accelerated benefit payment request is submitted;

2. Disclose that:

a. Receipt of the benefits may be taxable; and

b. Assistance from a personal tax advisor is recommended;

and

3. Be prominently displayed on the first page of the:

a. Policy or rider; and

b. Documents related to the policy or rider.

(b) This subsection shall not apply to a qualified long-term care insurance contract.

(7) Benefit triggers.

(a) Activities of daily living and cognitive impairment shall be:

1. Used to measure an insured's need for long-term care;

2. Described in the policy or certificate in a separate paragraph; and

3. Labeled "Eligibility for the Payment of Benefits".

(b) Any benefit triggers not identified in paragraph (a) of this subsection shall also be explained in the benefit triggers section of the policy or certificate.

(c) If benefit triggers differ for different benefits, an explanation of the trigger shall accompany each benefit description.

(d) If certification of a certain level of functional dependency by an attending physician or other specified person is required for determination of eligibility for benefits, the required certification shall be disclosed.

(8) A qualified long-term care insurance contract shall include a disclosure statement:

(a) In the policy and as established in Outline of Coverage, HIPMC-LTC-7; and

(b) Which states that the policy is intended to be a qualified long-term care insurance contract under 29 U.S.C. 7702B(b).

(9) A nonqualified long-term care insurance contract shall include a disclosure statement:

(a) In the policy and as established in Outline of Coverage, HIPMC-LTC-7; and

(b) Which states that the policy is not intended to be a qualified long-term care insurance contract.

Section 6. Required Disclosure of Rating Practices to Consumers. (1) Except as provided in subsection (2) of this section, this section shall apply to any long-term care policy or certificate issued in Kentucky beginning January 15, 2003.

(2) For a certificate issued on or after July 15, 2002, under a group long-term care insurance policy as identified in KRS 304.14-600(5)(a), which was in force July 15, 2002, the provisions of this section shall apply on the policy anniversary following July 15, 2003.

(3) Except for a policy for which no applicable premium rate or rate schedule increases may be made, an insurer shall provide the information listed in this subsection to the applicant when application or enrollment occurs, unless the method of application does not allow for delivery at that time:

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions and the policyholder's or certificate holder's option if a premium rate is revised;

(c) The premium rate or rate schedules applicable to the applicant that shall be in effect until a request for an increase is made;

(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:

1. A description of when premium rate or rate schedule adjustments shall be effective, including the next anniversary date or billing date; and

2. If the premium rate or rate schedule is changed, the right to a revised premium rate or rate schedule as provided in paragraph (c) of this subsection; and

(e) 1. Information regarding each premium rate increase on the policy form or similar policy forms during the past ten (10) years for Kentucky or any other state that, at a minimum, shall identify:

a. The policy forms for which premium rates have been increased;

b. The calendar years when the form was available for purchase; and

c. The amount or percent of each increase. The percentage may be expressed as:

(i) A percentage of the premium rate prior to the increase; or

(ii) If the rate increase is variable by rating characteristics, the minimum and maximum percentages.

2. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

3. An insurer may exclude, from the disclosure premium rate increases that occurred prior to the acquisition of and only apply to:

a. Blocks of business acquired from other nonaffiliated insurers; or

b. Long-term care policies acquired from other nonaffiliated insurers.

4. If an acquiring insurer files for a rate increase on a long-term care policy form acquired from a nonaffiliated insurer or block of policy forms acquired from a nonaffiliated insurer and if those increases occurred prior to the acquisition on or before the later of July 15, 2002 or the end of a twenty-four (24) month period following the acquisition of the block of business or policies, the acquiring insurer may exclude that rate increase from the disclosure.

a. The rate increase that may be excluded pursuant to this subparagraph shall be disclosed by the nonaffiliated selling company in accordance with subparagraph 1 of this paragraph; and [ ]

b. If the acquiring insurer files for a subsequent rate increase, within the twenty-four (24) month period, on the same policy form acquired from a nonaffiliated insurer or block of policy forms acquired from a nonaffiliated insurer, the acquiring insurer shall make the disclosures required by this paragraph, including disclosure of the earlier rate increase.

(4) If the method of application does not allow for delivery when application or enrollment occurs, the information listed in subsection (3)(a) and (e) of this section shall be delivered to the applicant no later than the date the policy or certificate is delivered.

(5) An applicant shall sign an acknowledgement that the insurer made the disclosure required under subsection (3)(a) and (e) of this section:

(a) When application occurs; or

(b) If the method of application does not allow signature when application occurs, no later than the delivery date of the policy or certificate.

(6) An insurer shall use forms HIPMC-LTC-1 and HIPMC-LTC-2, to comply with the requirements of subsections (3) and (5) of this section.

(7) An insurer shall provide notice of an upcoming premium rate schedule increase to a policyholder or certificate holder, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer.

(8) The notice required, pursuant to subsection (7) of this section, shall include the information required by subsection (3) of this section when the rate increase is implemented.

Section 7. Initial Filing Requirements. (1) This section shall apply to a long-term care policy issued in Kentucky beginning January 15, 2003.

(2) An insurer shall provide the information listed in this subsection to the commissioner in accordance with the time period established in KRS 304.14-120(2), including:

(a) A copy of the disclosure documents required in Section 6 of this administrative regulation; and

(b) An actuarial certification consisting of at least the following:

1. A statement that the:

a. Initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience; and

b. Premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

2. A statement that the policy design and coverage have been reviewed and considered;

3. A statement that the underwriting and claims adjudication processes have been reviewed and considered;

4. A complete description of the basis for contract reserves that are anticipated to be held under the form, including:

a. Sufficient detail or sample calculations to depict completely the reserve amounts to be held;

b. A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

c. A statement that except for the attained-age rating, if permitted, the net valuation premium for renewal years does not increase; and

d. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses, or if the statement cannot be made, a complete description of the situations in which this does not occur;

(i) An aggregate distribution of anticipated issues may be used if the underlying gross premiums maintain a reasonably consistent relationship; and

(ii) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration as identified under subsection (3) of this section based on a standard age distribution; and

5.a. A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms currently also available from the insurer except for reasonable differences attributable to benefits; or

b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums which shall include:

(a) Premium and claim experience on similar policy forms, adjusted for any premium and benefit differences;

(b) Relevant and creditable data from other studies; or

(c) Premium and claims experience, and relevant and creditable data as identified in paragraphs (a) and (b) of this subsection.

Section 8. Prohibition Against Postclaims Underwriting. (1) Except for an application which is guaranteed issue, an application for a long-term care insurance policy or certificate shall contain clear and unambiguous questions designed to ascertain the health

condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks if the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the medication that has been prescribed.

(b) If at application, the medications listed in the application were known by the insurer, or should have been known, to be directly related to a medical condition for which coverage would be denied, the policy or certificate shall not be rescinded for that condition.

(3) Except for a policy or certificate which is guaranteed issue:

(a) The language shall be conspicuous and located in close proximity to the applicant's signature block on an application for a long-term care insurance policy or certificate: "Caution: If your answers on this application, to the best of your knowledge and belief, are incorrect or untrue, (insurer name) has the right to deny benefits or rescind your policy."

(b) The language identified in HIPMC-LTC-10, or substantially similar language, shall be clear and easy to read on the long-term care insurance policy or certificate when it is delivered.

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following:

1. A report of a physical examination;
2. An assessment of functional capacity;
3. An attending physician's statement; or
4. A copy of the medical records.

(4) A copy of the completed application or enrollment form, as applicable, shall be delivered to the insured no later than the delivery date of the policy or certificate unless it was retained by the applicant at application.

(5) An insurer issuing long-term care insurance benefits shall:[:]

(a) Except for a policy or certificate rescission voluntarily effected by the insured, maintain a record of all policy or certificate rescissions, both Kentucky and countrywide; and

(b) Annually submit the information identified in paragraph (a) of this subsection to the commissioner using HIPMC-LTC-3.

Section 9. Minimum Standards for Home Health and Community Care Benefits in Long-term Care Insurance Policies. (1) A long-term care insurance policy or certificate which provides benefits for home health care or community care services shall not limit or exclude benefits by:

(a) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

(b) Requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered;

(c) Limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) Requiring that a nurse or therapist provide services covered by the policy that may be provided by a:

1. Home health aide; or
2. Other licensed or certified home care worker acting within the worker's scope of licensure or certification;

(e) Excluding coverage for personal care services provided by a home health aide;

(f) Requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) Requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) Limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) Excluding coverage for adult day care services.

(2)(a) A long-term care insurance policy or certificate which includes home health or community care services shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year's coverage available for nursing home benefits under the policy or certificate, when covered home health or community care services are

received.

(b) The requirement identified in paragraph (a) of this subsection shall not apply to a policy or certificate issued to a resident of a continuing care retirement community.

(3) In determining maximum coverage under the terms of a policy or certificate, home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate.

Section 10. Requirement to Offer Inflation Protection. (1) In addition to any other inflation protection, an insurer offering a long-term care insurance policy shall offer to the policyholder, an option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy and when the policy is purchased, the option to purchase a policy with an inflation protection feature that is no less favorable than one (1) of the following:

(a) Increases benefit levels annually in a manner that increases are compounded annually at a rate no less than five (5) percent;

(b) If the option for the previous period has not ~~been~~[be] declined, guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status. The amount of the additional benefit shall not be less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five (5) percent for the period:

1. Beginning with the purchase of the existing benefit; and
2. Extending until the year in which the offer is made; or

(c)1. Covers a specified percentage of actual or reasonable charges; and

2. Does not include a maximum specified indemnity amount or limit.

(2) If a long-term care policy is issued to a:

(a) Group, the required offer in subsection (1) of this section shall be made to the group policyholder; or

(b) Group as defined in KRS 304.14-600(5)(d) other than to a continuing care retirement community, the required offer in Subsection (1) of this section shall be made to each proposed certificate holder.

(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4) An insurer:

(a) Shall disclose, in or with the outline of coverage:

1. A graphic comparison of the benefit levels of a policy, which:
  - a. Increases benefits over the policy period; and
  - b. Does not increase benefits over the policy period; and
2. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases;[:]

(b) Shall show the benefit levels as identified in ~~paragraph (a)1 of this subsection~~[subparagraph 1 of this paragraph] for a period of twenty (20) years or more; and[:]

(c) May use a reasonable hypothetical, or a graphic demonstration for the disclosure identified in paragraphs (a) and (b) of this subsection.

(5) Inflation protection benefit increases under a policy which contains these benefits shall continue regardless of an insured's:

- (a) Age;
- (b) Claim status;
- (c) Claim history; or
- (d) Length of time the person has been insured under the policy.

(6) An offer of inflation protection which provides automatic benefit increases shall:

(a) Include an offer of a premium which the insurer expects to remain constant; and

(b) Disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as identified in subsection (1)(a) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.



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(b) As established in HIPMC-LTC-10, the rejection of inflation protection, which may be either in the application or in a separate form, shall be considered a part of the application.

Section 11. Requirements for Application Forms and Replacement Coverage. (1)(a) Application forms shall include questions designed to obtain information to determine if:

1. The applicant has another long-term care insurance policy or certificate in force on the date of application; or

2. A long-term care insurance policy or certificate is intended to replace:

a. An accident and sickness policy or certificate currently in force; or

b. A long-term care policy or certificate currently in force.

(b) A supplementary application or other form, containing the questions required by this section, may be used if signed by the:

1. Applicant; and

2. Agent, if coverage is sold by an agent.

(c) If a replacement policy is issued to a group, as defined by KRS 304.14-600(5)(a), the following questions shall be included and may be modified only to the extent necessary to obtain information about a health or long-term care insurance policy other than the group policy being replaced if the certificate holder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force, including a health-care service contract or health maintenance organization contract?

2. Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

a. If yes, with which company?

b. If that policy lapsed, when did it lapse?

3. Are you covered by Medicaid?

4. Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?

(2) An agent shall list other health insurance policies sold by the agent to the applicant which:

(a) Are currently in force; and

(b) Were sold in the past five (5) years and are no longer in force.

(3) Solicitations other than direct response.

(a) Upon determining that a sale will involve replacement, an insurer, which does not use direct response solicitation methods or an agent of the insurer, shall provide the applicant with a notice regarding replacement of accident and sickness or long-term care coverage as established in the HIPMC-LTC-8.

(b)1. One (1) copy of the notice identified in this subsection shall be retained by the applicant; and

2. A copy of the notice shall be signed by the applicant and retained by the insurer.

(c) The notice, as identified in this subsection shall be provided prior to issuance or delivery of the individual long-term care insurance policy.

(4) Direct response solicitations. An insurer which uses direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant:

(a) If it is determined that a sale will involve a replacement; and

(b) As established in the HIPMC-LTC-9.

(5)(a) If replacement is intended, the replacing insurer shall provide written notification to the existing insurer of the proposed replacement.

(b) The existing policy shall be identified by the:

1. Insurer;

2. Name of the insured; and

3.a. Insured's policy number; or

b. Insured's address, including ZIP code.

(c) The notice shall be delivered within five (5) business days of the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(6)(a) A life insurance policy which accelerates benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy.

(b) If the policy being replaced is a life insurance policy, the

insurer shall comply with the replacement requirements of KRS 304.12-030 and 806 KAR 12:080.

(c) If a life insurance policy which accelerates benefits for long-term care is replaced by another life insurance policy which accelerates benefits for long-term care, the replacing insurer shall comply with the:

1. Long-term care replacement requirements as identified in paragraph (a) of this subsection; and

2. Life insurance replacement requirements as identified in paragraph (b) of this subsection.

Section 12. Reporting Requirements. (1) For each agent, an insurer shall maintain records, including an agent's amount of:

(a) Replacement sales as a percent of the agent's total annual sales; and

(b) Lapses of long-term care insurance policies sold as a percent of the agent's total annual sales.

(2) An insurer shall use the HIPMC-LTC-11 to report to the department annually by June 30 the ten (10) percent of the insurer's agents with the greatest percentages of lapses and replacements based upon information identified in subsection (1) of this section.

(3) Reported replacement and lapse rates shall not alone constitute a violation of the Kentucky insurance code or necessarily imply wrongdoing. The reports, as referenced in subsections (1) and (2) of this section, shall be used by the department to conduct a comprehensive review of agent activities regarding the sale of long-term care insurance.

(4) An insurer shall report to the department annually by June 30 using HIPMC-LTC-11, the number of:

(a) Lapsed long-term care insurance policies as a percent of the insurer's total:

1. Annual sales; and

2. Number of long-term care insurance policies in force at the end of the preceding calendar year; and

(b) Replacement long-term care insurance policies sold as a percent of the insurer's total:

1. Annual sales; and

2. Number of long-term care insurance policies in force as of the preceding calendar year.

(5) For qualified long-term care insurance contracts an insurer shall file a report with the department annually by June 30, containing the number of claims denied for each class of business, expressed as a percentage of claims denied, using the HIPMC-LTC-4.

(6) Reports required in this section shall include information on a statewide basis.

Section 13. Licensing. An agent shall not be authorized to market, sell, solicit, or negotiate with respect to long-term care insurance except as authorized by KRS 304.9-080(1).

Section 14. Discretionary Powers of Commissioner. Upon written request and after an administrative hearing pursuant to KRS 304.2-310, the commissioner may issue an order to modify or suspend an identified provision of this administrative regulation regarding a long-term care insurance policy or certificate upon a written finding that:

(1) The modification or suspension is in the best interest of the insureds;

(2) The purposes to be achieved may not be effectively or efficiently achieved without the modification or suspension; and

(3)(a) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;

(b)1. The policy or certificate is issued to residents of:

a. A life care or continuing care retirement community; or

b. A residential community for the elderly other than a life care or continuing care retirement community; and

2. The modification or suspension is reasonably related to the special needs or nature of the community as identified in subparagraph 1 of this paragraph; or

(c) The modification or suspension is necessary to permit long-term care insurance to be sold as part of or in conjunction with,

another insurance product.

Section 15. Reserve Standards. (1)(a) If long-term care benefits are provided through the acceleration of benefits under a group or individual life insurance policy or rider to a group or individual life insurance policy, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.

(b) If the policy or rider is in claim status, claim reserves shall be established.

(c) Except for voluntary termination rates or as established in paragraph (d) of this subsection, reserves for a policy or rider subject to the requirements of this subsection shall be based on:

1. The multiple decrement model utilizing relevant decrements;

or

2. Single decrement approximations, if the:

a. Calculation produces essentially similar reserves;

b. Reserve is clearly more conservative; or

c. Reserve is immaterial.

(d) Calculations may consider the reduction in life insurance benefits due to the payment of long-term care benefits, except the reserves for the long-term care benefit and the life insurance benefit shall not be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(e) In the development and calculation of reserves for a policy and rider subject to the requirements of this subsection, consideration shall be given to the applicable policy provisions, marketing methods, administrative procedures, and other considerations which have an impact on projected claim costs, including:

1. Definition of insured events;

2. Covered long-term care facilities;

3. Existence of home convalescence care coverage;

4. Definition of facilities;

5. Existence or absence of barriers to eligibility;

6. Premium waiver provision;

7. Renewability;

8. Ability to raise premiums;

9. Marketing method;

10. Underwriting procedures;

11. Claims adjustment procedures;

12. Waiting period;

13. Maximum benefit;

14. Availability of eligible facilities;

15. Margins in claim costs;

16. Optional nature of benefit;

17. Delay in eligibility for benefit;

18. Inflation protection provisions; and

19. Guaranteed insurability option.

(f) An applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) If long-term care benefits are not provided through the acceleration of benefits under a group or individual life policy or rider to this policy, reserves shall be determined in accordance with KRS 304.6-070.

Section 16. Loss Ratio. (1) Except for a policy or certificate that is subject to Sections 7 and 17 of this administrative regulation, a long-term care insurance policy or certificate shall comply with this section.

(2)(a) Benefits under a long-term care insurance policy shall be deemed reasonable in relation to premiums if the expected loss ratio is:

1. At least sixty (60) percent; and

2. Calculated in a manner for adequate reserving of the long-term care insurance risk.

(b) In evaluating the expected loss ratio, consideration shall be given to relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;

2. The period for which rates are computed to provide coverage;

3. Experienced and projected trends;

4. Concentration of experience within early policy duration;

5. Expected claim fluctuation;

6. Experience refunds, adjustments, or dividends;

7. Renewability features;

8. Expense factors, as appropriate;

9. Interest;

10. Experimental nature of the coverage;

11. Policy reserves;

12. Mix of business by risk classification; and

13. Product features including:

a. Long elimination periods;

b. High deductibles; and

c. High maximum limits.

(3) Subsection (2) of this section shall not apply to a life insurance policy which accelerates benefits for long-term care.

(4) A life insurance policy which funds long-term care benefits entirely by accelerating the death benefit shall be considered to provide reasonable benefits in relation to premiums paid, if the policy complies with the following:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed to be no less than the minimum guaranteed interest rate for cash value accumulations without long-term care as identified in the policy;

(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of KRS 304.15-310;

(c) The policy meets the following disclosure requirements:

1. If an application for a long-term care insurance contract or certificate is approved, the insurer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval;

2. When the policy is delivered, a policy summary shall be delivered in accordance with KRS 304.14-615(9);

3. If the long-term care inflation protection option required by Section 10(1) of this administrative regulation is not available, the policy summary shall state that long-term care inflation protection option required by Section 10(1) of this administrative regulation is not available under the policy;

4. The policy summary required by subparagraph 2 of this paragraph may be incorporated into a basic illustration that meets the requirements of 806 KAR 12:140, Sections 8 and 9; and

5. If a long-term care benefit, funded through a life insurance product by the acceleration of the death benefit, is in the benefit payment status, a monthly report shall be provided in accordance with KRS 304.14-615(10)[.];

(d) Any policy illustration meets the applicable requirements of 806 KAR 12:140, Section 3; and

(e) An actuarial memorandum is filed with the department, which includes:

1. A description of the basis on which the long-term care rates were determined;

2. A description of the basis for the reserves;

3. A summary of the:

a. Type of policy;

b. Benefits;

c. Renewability;

d. General marketing method; and

e. Limits on ages of issuance;

4.a. A description and a table of each actuarial assumption used; and

b. For expenses, shall include the percent of premium dollars per policy and dollars per unit of benefits, if any;

5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

6. The estimated average annual premium per policy and the average issue age;

7.a. A statement that:

(i) Indicates if underwriting is performed upon application; and

(ii) If underwriting is used, includes a description of the type of underwriting used, including medical underwriting or functional assessment underwriting; and

b. If related to a group policy, the statement as established in clause a of this paragraph shall indicate:

(i) If the enrollee or a dependent shall be underwritten; and

(ii) When underwriting shall occur; and

8. For active lives and insureds in long-term care status, a description of the long-term care policy provision on:

- a. Required premiums;
- b. Nonforfeiture values; and
- c. Reserves on the underlying life insurance policy.

Section 17. Premium Rate Schedule Increases. (1)(a) Except as required in paragraph (b) of this subsection, this section shall apply to a long-term care policy or certificate issued in Kentucky beginning January 15, 2003.

(b) For a certificate issued on or after the effective date of this administrative regulation under a group long-term care insurance policy in force on July 15, 2002, the provisions of this section shall apply on the policy anniversary following July 15, 2003.

(2) An insurer shall provide a notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least thirty (30) days prior to the notice issued to policyholders, which shall include:

(a) Information required by Section 6 of this administrative regulation;

(b) Certification by a qualified actuary that:

1. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated; and

2. The premium rate filing is in compliance with the provisions of this section;

(c) An actuarial memorandum justifying the rate schedule change request which includes:

1. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

a. Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;

b. Unless the rate increase is an exceptional increase, the projections shall include the development of the lifetime loss ratio;

c. The projections shall demonstrate compliance with subsection (3) of this section; and

d. For exceptional increases:

(i) The projected experience shall be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(ii) If the commissioner makes a determination as required in subsection (12)(b) of this section that offsets may exist, the insurer shall use appropriate net projected experience;

2. If the rate increase triggers the contingent benefit upon lapse, disclosure of how reserves have been incorporated in this rate increase;

3. Disclosure of the analysis performed to determine:

a. Why a rate adjustment is necessary;

b. Which pricing assumptions were not realized and why; and

c. What actions taken by the company have been relied on by the actuary;

4. A statement that consideration was given to:

a. Policy design;

b. Underwriting; and

c. Claims adjudication practices; and

5. If necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates;

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) Sufficient information for review and approval of the premium rate schedule increase by the commissioner.

(3) Premium rate schedule increases shall be determined in accordance with the following requirements:

(a) Exceptional increases shall provide that seventy (70) percent of the present value of projected additional premiums from the exceptional increase shall be returned to policyholders in benefits;

(b) Premium rate schedule increases shall be calculated in a

manner that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:

1. The accumulated value of the initial earned premium multiplied by fifty-eight (58) percent;

2. Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;

3. The present value of future projected initial earned premiums multiplied by fifty-eight (58) percent; and

4. Eighty-five (85) percent of the present value of future projected premiums not included in subparagraph 3 of this paragraph on an earned basis;

(c) If a policy form has exceptional and other increases, the values in paragraph (b)2 and 4 of this subsection shall also include seventy (70) percent for exceptional rate increase amounts; and

(d)1. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as required by 806 KAR 6:080, Section 1(3)(a); and

2. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(4) For each rate increase implemented, an insurer shall file for review by the commissioner updated projections, as identified in subsection (2)(c)1 of this section, annually for the next three (3) years, which shall include a comparison of actual results to projected values.

(a) If actual results are not consistent with projected values from prior projections, the commissioner may extend the period to greater than three (3) years.

(b) For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(5)(a) If a premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as established in subsection (2)(c)1 of this section, shall be filed for review by the commissioner every five (5) years following the end of the required period identified in subsection (4) of this section.

(b) For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(6)(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (3) of this section, the commissioner may require the insurer to implement any of the following:

1. Premium rate schedule adjustments; or

2. Measures other than premium rate schedule adjustments to reduce the difference between the projected and actual experience.

(b) In determining if the actual experience adequately matches the projected experience, consideration shall be given to subsection (2)(c)5 of this section, if applicable.

(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse:

(a) The insurer shall file:

1. The original anticipated lifetime loss ratio and the premium rate schedule increase that would have been calculated according to subsection (3) of this section had the greater of the original anticipated lifetime loss ratio or fifty-eight (58) percent been used in the calculations described in subsection (3)(b)1 and 3 of this section; and

2.a. A plan, subject to commissioner's approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both; or

b. Documentation, which demonstrates that appropriate administration and claims processing have been implemented or are in

effect; or

(b) If an insurer does not comply with paragraph (a)2~~[subparagraph 2 of paragraph (a)]~~ of this subsection, the commissioner may impose the condition identified in subsection (8) of this section.

(8)(a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapse rates have occurred or are anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms;
2. The rate increase is not an exceptional increase; and
3. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) If significant adverse lapse rates have occurred, are anticipated in the filing, or are evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists.

(c) Following a determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to insureds subject to the rate increase the option to replace existing coverage with one (1) or more comparable products offered by the insurer or an affiliate of the insurer.

1. The offer shall:
  - a. Be subject to the approval of the commissioner;
  - b. Be based on actuarially sound principles;
  - c. Not be based on attained age; and
  - d. Provide maximum benefits under a new policy, which shall be:

- (i) Accepted by an insured; and
- (ii) Reduced by comparable benefits already paid under the existing policy.

2.a. The insurer shall maintain the experience of all replacement insureds separate from the experience of insured's originally issued the policy forms.

b. If a rate increase on the policy form is requested, the rate increase shall be limited to the lesser of:

- (i) The maximum rate increase which was determined on the basis of the combined experience; and
- (ii) The maximum rate increase which was determined on the basis of the experience of the insured's originally issued the form plus ten (10) percent.

(9) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may impose the provisions of subsection (8) of this section and prohibit the insurer from:

- (a) Filing and marketing comparable coverage for a period of up to five (5) years; or
- (b) Offering all other similar coverage's and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(10) Subsections (1) through (9) of this section shall not apply to a policy for which the long-term care benefits provided by the policy are incidental, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed to be no less than the minimum guaranteed interest rate for cash value accumulations without long-term care as identified in the policy;

(b) The portion of the policy which provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements, as applicable, in any of the following:

1. KRS 304.15-310;
2. KRS 304.15-315;
3. 806 KAR 15:010; or
4. 806 KAR 15:030;

(c) The policy meets the disclosure requirements of Section 16(4)(c) of this administrative regulation;

(d) The portion of the policy, which provides insurance benefits other than long-term care coverage meets the requirements, as

applicable, in the following:

1. Policy illustrations as required in 806 KAR 12:140; and
2. Disclosure requirements as required in 806 KAR 15:010 and 15:030; and

(e) An actuarial memorandum is filed with the department, which includes:

1. A description of the basis for determination of the long-term care rates;

2. A description of the basis for the reserves;

3. A summary of the:

- a. Type of policy;
- b. Benefits;
- c. Renewability;
- d. Marketing method; and
- e. Limits on ages of issuance;

4. A description and table of each actuarial assumption used, including expenses, for which an insurer shall include:

- a. Percent of premium dollars per policy; and
- b. Dollars per unit of benefits, if any;

5. A description and table of the:

- a. Anticipated policy reserves for active lives; and
- b. Additional reserves to be held in each future year for active lives;

6.a. The estimated average annual premium per policy; and

b. The average issue age;

7. A statement regarding the performance or nonperformance of underwriting at application.

a. The statement shall:

- (i) Indicate whether underwriting is used; and
- (ii) If underwriting is used, include a description of the type of underwriting used, including medical underwriting or functional assessment underwriting; and

b. If the statement relates to a group policy, the statement shall indicate:

- (i) If the enrollee or dependent will be underwritten; and
- (ii) When underwriting will occur; and

8. A description of the effect of the long-term care policy provision on the:

- a. Required premiums;
- b. Nonforfeiture values; and
- c. For active lives and for insured's in long-term care claim status, reserves on the underlying insurance policy.

(11) Subsections (6) and (8) of this section shall not apply to insurance policies issued to a group identified in KRS 304.14-600(5)(a) if the:

- (a)1. Policies insure 250 or more persons; and
2. Policyholder has 5,000 or more eligible employees of a single employer; or

(b) The policyholder, and not the certificate holder, pays a material portion of the premium, which shall not be less than twenty (20) percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

(12) For an exceptional increase, the commissioner:

(a) May request a review of the basis for a request that an increase be considered an exceptional increase by:

1. An independent actuary; or
2. A professional actuarial body; and

(b) In determining that the necessary basis for an exceptional increase exists, shall determine any potential offsets to higher claim costs.

(13) Except as required in this section, an exceptional increase shall be subject to the same requirements as any premium rate schedule increase.

Section 18. Filing Requirement for a Group Policy Issued in Another State. Prior to offering group long-term care insurance issued in another state to a resident of Kentucky pursuant to KRS 304.14-610, an insurer shall file with the commissioner evidence that the group policy or certificate issued under the group policy has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to requirements in Kentucky.

Section 19. Filing Requirements for Advertising. (1) An insurer providing long-term care insurance or benefits in Kentucky shall provide a copy of a long-term care insurance advertisement intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with this administrative regulation and KRS 304.12-020, 304.14-120, 304.14-620, and 806 KAR 12:010, 806 KAR 14:005, 806 KAR 14:007, Section 5(2)~~[and this administrative regulation]~~;

(2) An advertisement shall be retained by the insurer for at least five (5) years from the date the advertisement was first used.

(3) The commissioner may exempt advertising from the requirements of this section pursuant to KRS 304.14-120(4).

Section 20. Standards for Marketing. (1) An insurer marketing long-term care insurance coverage in Kentucky, directly or through its agents, shall:

(a) Establish marketing procedures and agent training requirements to assure that:

1. Marketing activities, including a comparison of policies, by its agent, shall be fair and accurate; and

2. Excessive insurance shall not be sold or issued.

(b) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy, the notice as established in HIPMC-LTC-10.

(c) Provide to the applicant a copy of each disclosure form required in Section 6(5) and (6) of this administrative regulation.

(d) Inquire and make every reasonable effort to identify:

1. If a prospective applicant or enrollee for long-term care insurance has accident and sickness or long-term care insurance; and

2. The type and amount of insurance identified in subparagraph 1 of this paragraph.

(e) For a qualified long-term care insurance contract, not be required to make an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance, in accordance with paragraph (d) of this section.

(f) Establish auditable procedures for verifying compliance with the requirements of this subsection.

(g) At solicitation, provide:

1. Written notice to the prospective policyholder and certificate holder that the Kentucky State Health Insurance Assistance Program is available; and

2. The address and telephone number of the program as identified in subparagraph 1 of this paragraph.

(h) For a long-term care insurance policy and certificate, use the terms, noncancellable or level premium, if the policy or certificate conforms to Section 3(1)(c) and (d) of this administrative regulation.

(i) Provide an explanation of:

1. Contingent benefit upon lapse as described in Section 25(6)(c) of this administrative regulation; and

2. If applicable, the additional contingent benefit upon lapse provided to all policies with fixed or limited premium paying periods as described in Section 25(6)(d).

(2) An insurer shall:

(a) Comply with the requirements of KRS Chapter 304.12; and

(b) Not perform the following acts and practices:

1. Twisting;

2. High pressure tactics;

3. Cold lead advertising; and

4. Misrepresentation.

(3)(a) To comply with the requirements of this subsection, an association, as defined in KRS 304.14-600(5)(b) shall have the primary responsibility of educating its members concerning long-term care issues in general:

1. If endorsing or selling long-term care insurance; and

2. To ensure that its members make informed decisions.

(b) An association shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by the association to ensure that its members receive a balanced and complete explanation of the features of the policy or certificate that is endorsed or sold.

(c) An insurer shall file with the department the following:

1. An insurance policy and, if applicable, a certificate;

2. An outline of coverage, which corresponds to the filed policy or certificate; and

3. Advertisements as requested by the department pursuant to Section 19(1)~~[18(1)]~~ of this administrative regulation.

(d) An association shall disclose in a long-term care insurance solicitation:

1. The specific nature and amount of the compensation arrangements, including fees, commissions, administrative fees, and other forms of financial support, which the association receives from endorsement or sale of the policy or certificate to its members; and

2. A brief description of the process used to select the policy and the insurer, which issued the policy.

(e) If an association and insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to the association members.

(f) The board of directors of an association selling or endorsing a long-term care insurance policy or certificate shall review and approve the:

1. Insurance policy; and

2. Compensation arrangements made with the insurer.

(g) Except for a qualified long-term care insurance contract, an association shall:

1. Upon a decision to endorse a long-term care insurance contract, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to:

a. Conduct an examination of the policy, including its benefits, features, and rates; and

b. Update the examination, if a material change is made to the contract;

2. Actively monitor the marketing efforts of the insurer and its agents; and

3. Review and approve:

a. Marketing materials; or

b. Insurance communications other than marketing materials, including communications:

(i) Used to promote sales; or

(ii) Sent to members regarding the policy or certificate.

(h) A group long-term care insurance policy or certificate shall not be issued to an association unless the insurer files with the commissioner the information required in this subsection.

(i) Unless an insurer certifies annually that an association has complied with the requirements established in this subsection, an insurer shall not:

1.~~[a.]~~ Issue a long-term care policy or certificate to the association; or

2.~~[b.]~~ Continue to market the policy or certificate.

(j) Failure to comply with the filing and certification requirements of this section shall constitute an unfair trade practice in violation of KRS 304.12-010.

Section 21. Suitability. (1) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

(2) An insurer marketing long-term care insurance shall:

(a) Develop and use suitability standards to determine if the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Train an agent to use the suitability standards identified in paragraph (a) of this ~~subsection~~~~[paragraph]~~; and

(c) Maintain a copy of the suitability standards, which shall be available for inspection upon request by the commissioner.

(3)(a) To determine if an applicant meets the suitability standards developed by the insurer, the agent and insurer shall develop a procedure, which considers the:

1. Applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

2. Applicant's goals or needs with respect to:

a. Long-term care; and

b. Advantages and disadvantages of insurance to meet the applicant's goals or needs; and

3. Values, benefits, and costs of the applicant's existing insurance, if any, as compared to the values, benefits, and costs of the recommended purchase or replacement.

(b) The insurer and, if an agent is involved, the agent, shall make a reasonable effort to obtain the information identified in paragraph (a) of this subsection using the HIPMC-LTC-1 Long-term Care Insurance Personal Work Sheet, which shall:

1. Be presented to the applicant at or prior to application[;]
2. Include not less than the information identified in the format of the HIPMC-LTC-1;

3. Be provided in no less than twelve (12) point type; and

4. Be filed with the commissioner.

(c) The insurer may request additional information from the applicant to comply with its suitability standards.

(d) Except for a Long-term Care Personal Work Sheet completed for the sale of employer group long-term care insurance to employees and spouses of employees, a Long-term Care Personal Work Sheet shall be completed and returned to the insurer prior to the insurer's consideration of the applicant for coverage.

(e) An insurer or agent shall not sell or disseminate information obtained from a Long-term Care Personal Work Sheet outside the company or agency.

(4) An insurer shall use the suitability standards as identified in subsection(2) of this section to determine if the issuance of long-term care insurance coverage is appropriate for an applicant.

(5) An agent shall use the suitability standards of an insurer in marketing long-term care insurance.

(6) When the Long-term Care Personal Work Sheet is provided to the applicant pursuant to subsection (3)(b) of this section, the disclosure form entitled Things You Should Know Before You Buy Long-term Care Insurance, HIPMC-LTC-5 shall be provided in at least twelve (12) point type.

(7)(a) If an insurer determines that the applicant does not meet the financial suitability standards, or if the applicant has declined to provide the information as identified in the Long-term Care Personal Work Sheet, the insurer may reject the application or send to the applicant, a:

1. Long-term Care Suitability Letter, HIPMC-LTC-6; or

2. Letter, which is:

a. Similar to the Long-term Care Suitability Letter identified in Subparagraph 1 of this paragraph; and

b. Approved by the commissioner.

(b) If the applicant declined to provide financial information, the insurer may verify the applicant's intent using an alternative method.

(c) The applicant's returned HIPMC-LTC-6 or a record of the alternative method of verification shall be maintained as part of the applicant's file.

(8) For the previous calendar year, an insurer shall report annually by June 30 to the commissioner:

(a) The total number of applications for long-term care insurance received from Kentucky residents;

(b) Of the number reporting in paragraph (a) of this subsection, the number of applicants who:

1. Declined to provide information on the personal worksheet;

2. Did not meet the suitability standards; and

3. Chose to confirm after receiving a suitability letter.

**Section 22. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates.** If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

**Section 23. Availability of New Services or Providers.** (1) (a) An insurer shall notify a policyholder of the availability of a new long-term policy product, which provides coverage for new long-term care services or providers material in nature and not previously available to the general public through the insurer.

(b) The notice shall be provided within twelve (12) months of the date the new policy product is made available for sale in Kentucky.

(2) An insurer:

(a) Shall not be required to provide the notification identified in

subsection (1) of this section:

1. For a policy issued prior to January 1, 2009; or

2. To a policyholder or certificate holder who:

a. Is currently eligible for benefits;

(i) Within an elimination period; or

(ii) On a claim;

b. Previously had been in claim status; or

c. May not be eligible to apply for coverage due to issue age limitations under the new policy; **and[;]**

(b) To add new services or providers, may require a policyholder to meet eligibility requirements, including:

1. Underwriting; and

2. Payment of the required premium.

(3) The insurer shall make the new coverage available by:

(a) 1. Adding a rider to the existing policy; and

2. Charging a separate premium for the new rider based on the insured's attained age;

(b)1. Exchanging the existing policy or certificate for a different policy or certificate with an issue age based on the present age of the insured; and

2. Recognizing past insured status by granting premium credits, which shall be based on premiums paid or reserves held for the prior policy or certificate, toward the premiums for the new policy or certificate;

(c) Exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged; or

(d) If filed and approved by the commissioner, an alternative program developed by the insurer, which meets the intent of this section.

(4) The cost of a new policy or certificate, as identified in subsection (3)(c) of this section, may recognize the difference in reserves between the:

(a) New policy or certificate; and

(b) Original policy or certificate.

(5) An insurer shall:

(a) Not be required to notify a policyholder of a new proprietary policy product, created and filed for use in a limited distribution channel; **and[;]**

(b) Notify a policyholder of a new proprietary policy product if a new long-term care product, which provides coverage for new long-term care services or providers material in nature, is made available to that limited distribution channel.

(6)(a) A policy issued pursuant to this section shall:

1. Be considered an exchange; and

2. Not be considered a replacement.

(b) An exchange as identified in paragraph (a) of this subsection shall not be subject to:

1. Requirements of Sections 11 and 21 of this administrative regulation; and

2. Reporting requirements of Section 12(1) through (4) of this administrative regulation.

(7) If the policy is:

(a) Offered through an employer, labor organization, professional, trade or occupational association, the notification required in subsection (1) of this section[;] shall be issued to the offering entity; or

(b) Issued to a group identified in KRS 304.14-600(5)(d), the notification required in Subsection (1) of this Section shall be issued to each certificate holder.

(8)(a) Pursuant to this section, an insurer may offer a policy, rider, certificate or coverage change to a policyholder or certificate holder.

(b) Upon request, a policyholder may apply for currently available coverage, which includes a new service or provider.

(c) To add a new service or provider, an insurer may require a policyholder to meet eligibility requirements, including:

1. Underwriting; and

2. Payment of the required premium.

(9) A life insurance policy or rider, which includes accelerated long-term care benefits, shall not be subject to the requirements of this section.

Section 24. Right to Reduce Coverage and Lower Premiums.

(1)(a) A long-term care insurance policy and certificate shall include a provision, which allows the policyholder or certificate holder to reduce coverage and lower the policy or certificate premium in at least one (1) of the following ways:

1. Reducing the maximum benefit; or
2. Reducing the daily, weekly or monthly benefit amount.

(b) An insurer may offer a reduction option not identified in paragraph (a) of this subsection, which is consistent with the:

1. Policy or certificate design; or
2. The insurer's administrative processes.

(2) The provision, identified in subsection (1) of this section, shall include:

(a) A description of the ways in which coverage may be reduced; and

(b) The process for requesting and implementing a reduction in coverage.

(3) The age used to determine a premium for the reduced coverage shall be based on the age used to determine a premium for the current coverage.

(4) An insurer may limit a reduction in coverage to a plan or option:

(a) Available for that policy form; and

(b) For which benefits shall be available after consideration of claims paid or payable.

(5) If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificate holder of the right to reduce coverage and premiums in the notice required by section 4(1)(c) of this administrative regulation.

(6) A life insurance policy or rider, which includes accelerated long-term care benefits shall not be subject to the requirements of this Section.

(7) The requirements of this section shall apply to a long-term care policy issued in Kentucky on or after January 1, 2010.

Section 25. Nonforfeiture Benefit Requirement. (1) A life insurance policy or rider, which includes accelerated long-term care benefits shall not be subject to the requirements of this section.

(2) Except as required in subsection (3) of this section, a long-term care insurance policy shall not be delivered or issued for delivery unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit.

(a) The offer of a nonforfeiture benefit may be in the form of a rider, which is attached to the policy.

(b) If a policyholder or certificate holder declines the nonforfeiture benefit identified in paragraph (a) of this subsection, the insurer shall provide a contingent benefit upon lapse, which shall be available for 120 days, following a substantial increase in premium rate, as established in subsection (6) of this section.

(3) If a group long-term care insurance policy is issued:[:]

(a) The offer required in subsection (2) of this section shall be made to the group policyholder; or

(b) As group long-term care insurance as defined in KRS 304.14-600(5)(d), other than to a continuing care retirement community or other similar entity, the offer shall be made to each proposed certificate holder.

(4) A nonforfeiture benefit offer as identified in subsection (2) of this section shall:

(a) Include coverage elements, eligibility, benefit triggers, and benefit length, which are identical to coverage issued without nonforfeiture benefits;

(b) Be the benefit described in subsection (7) of this section; and

(c) Be in writing if the nonforfeiture benefit is not described in:

1. The Outline of Coverage required under KRS 304.14-615(7);

or

2. Materials other than the Outline of Coverage, which are given to the prospective policyholder.

(5) If the offer required under subsection (2) of this section is:

(a) Rejected, the insurer shall provide the contingent benefit upon lapse described in this section; or[:]

(b) Accepted for a policy with a fixed or limited premium paying period, the contingent benefit upon lapse in subsection (6)(d) of

this section shall apply.

(6)(a) After rejection of the offer required under subsection (2) of this section, the insurer shall provide a contingent benefit upon lapse for a policy issued after July 15, 2002, including:

1. An individual policy without a nonforfeiture benefit; and
2. A group policy without a nonforfeiture benefit.

(b) If a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c)1. A contingent benefit upon lapse shall be triggered as identified in the following table if:

a. An insurer increases the premium rates to a level, which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium as established in this paragraph based on the insured's issue age; and

b. The policy or certificate lapses within 120 days of the due date of the increased premium:

<u>Triggers for a Substantial Premium Increase</u>	
<u>Issue Age</u>	<u>Percent Increase Over Initial Premium</u>
<u>29 and under</u>	<u>200%</u>
<u>30-34</u>	<u>190%</u>
<u>35-39</u>	<u>170%</u>
<u>40-44</u>	<u>150%</u>
<u>45-49</u>	<u>130%</u>
<u>50-54</u>	<u>110%</u>
<u>55-59</u>	<u>90%</u>
<u>60</u>	<u>70%</u>
<u>61</u>	<u>66%</u>
<u>62</u>	<u>62%</u>
<u>63</u>	<u>58%</u>
<u>64</u>	<u>54%</u>
<u>65</u>	<u>50%</u>
<u>66</u>	<u>48%</u>
<u>67</u>	<u>46%</u>
<u>68</u>	<u>44%</u>
<u>69</u>	<u>42%</u>
<u>70</u>	<u>40%</u>
<u>71</u>	<u>38%</u>
<u>72</u>	<u>36%</u>
<u>73</u>	<u>34%</u>
<u>74</u>	<u>32%</u>
<u>75</u>	<u>30%</u>
<u>76</u>	<u>28%</u>
<u>77</u>	<u>26%</u>
<u>78</u>	<u>24%</u>
<u>79</u>	<u>22%</u>
<u>80</u>	<u>20%</u>
<u>81</u>	<u>19%</u>
<u>82</u>	<u>18%</u>
<u>83</u>	<u>17%</u>
<u>84</u>	<u>16%</u>
<u>85</u>	<u>15%</u>
<u>86</u>	<u>14%</u>
<u>87</u>	<u>13%</u>
<u>88</u>	<u>12%</u>
<u>89</u>	<u>11%</u>
<u>90 and over</u>	<u>10%</u>

2. Unless required by Section 6(7) of this administrative regulation, a policyholder shall be notified at least thirty (30) days prior to the due date of a premium reflecting the rate increase, as identified in this paragraph.

(d)1. A contingent benefit upon lapse shall be triggered for a policy, which includes a fixed or limited premium paying period, as identified in the following table, if:

a. An insurer increases the premium rates to a level, which results in a cumulative increase of the annual premium equal to or

exceeding the percentage of the insured's initial annual premium as established in this paragraph based on the insured's issue age;

b. The policy or certificate lapses within 120 days of the due date of the premium, which increased; and

c. The ratio in paragraph (f)2 of this subsection is forty (40) percent or more;

Triggers for a Substantial Premium Increase	
Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

2. Unless an insurer **provides**~~[shall provide]~~ notice as established in Section 6(7) of this administrative regulation, a policyholder shall be notified at least thirty (30) days prior to the due date of the premium reflecting a rate increase by the insurer.

3.a. An insurer shall be subject to this paragraph and the contingent benefit upon lapse provision of paragraph (c) **of this subsection**; and

b. If a trigger as identified in paragraph (c) **of this subsection** and a trigger as identified in **this paragraph**~~(4)~~ are identified, the benefit provided shall be at the option of the insured.

(e) On or before the effective date of a substantial premium increase as established in paragraph (c) of this subsection, an insurer shall:

1. Offer to reduce policy benefits provided by the current coverage without requiring additional underwriting to prevent an increase in required premium payments;

2.a. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (7) of this section; and

b. Allow this option to be elected by the policyholder or certificate holder within the 120-day period identified in paragraph (c) of this subsection; and

3. Notify the policyholder or certificate holder that a default or lapse, which occurs within the 120-day period identified in paragraph (c) of this subsection shall be deemed to be an election of the offer to convert as identified in subparagraph 2 of this paragraph unless the automatic option in paragraph (f)3 applies.

(f) On or before the effective date of a substantial premium increase as identified in paragraph (d) of this subsection, the insurer shall:

1. Offer to reduce policy benefits provided by the current coverage without requiring additional underwriting in order that required premium payments are not increased;

2.a. Offer to convert the coverage to a paid-up status if the amount payable for each benefit is ninety (90) percent of the payable amount, which was in effect immediately prior to lapse, multiplied by the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period; and

b. Allow this option to be elected within the 120-day period identified in paragraph (d) of this subsection; and

3. Notify the policyholder or certificate holder that a default or lapse, which occurs within the 120-day period identified in paragraph (d) of this subsection shall be deemed to be an election of the offer to convert in subparagraph 2 of this paragraph if the ratio is forty (40) percent or more.

(7) A benefit continued as a nonforfeiture benefit, including a contingent benefit upon lapse in accordance with subsection (6)(c) of this section, shall be provided as follows:

(a)1. Pursuant to this subsection, a nonforfeiture benefit shall include a shortened benefit period, which provides paid-up long-term care insurance coverage after lapse.

2. The same benefit, including amount and frequency, in effect at lapse and not be increased in the future, shall be payable for a qualifying claim, except the lifetime maximum dollars or days of benefits shall be determined as established in paragraph (b) of this subsection.

(b)1. A standard nonforfeiture credit shall be equal to 100 percent of the sum of premiums paid, including the premiums paid prior to a change in benefits.

2. An insurer may offer an additional shortened benefit period option, if the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration.

3. The minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit upon lapse.

4. The calculation of a nonforfeiture credit shall be subject to the limitation of subsection (8) of this section.

(c)1.a. Except for a policy or certificate with attained age rating, a nonforfeiture benefit shall begin no later than the final day of the third year following the policy or certificate issue date.

b. A contingent benefit upon lapse shall be effective on the date of policy or certificate issue.

2. For a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of the end of the:

a. Tenth year following the policy or certificate issue date; or

b. Second year following the date the policy or certificate is no longer subject to attained age rating.

(d)1. A nonforfeiture credit may be used **up to the limit in the policy or certificate** for care and services qualifying for benefits under the terms of the policy or certificate.; and

2. ~~Shall not exceed the limits identified in the policy or certificate.]~~

(8) Benefits paid by an insurer when the policy or certificate is in premium paying status and paid up status shall not exceed the maximum benefits, which would be payable if the policy or certificate had remained in premium paying status.

(9) For a group and individual policy, an insurer shall provide the minimum nonforfeiture benefit as required under this section.

(10)(a) Except as provided in subsection (6) and paragraph (b) and (c) of this subsection, the requirements of this section shall apply to a long-term care policy issued in Kentucky on or after July 15, 2003.

(b) The requirements of this section shall not apply to a certificate issued on or after July 15, 2003 under a group long-term care insurance policy, as identified in KRS 304.14-600(5)(a), which was in force before July 15, 2003.

(c) Except for a new certificate under a group policy, as identified in KRS 304.14-600(5)(a), issued on July 16, 2003, the requirements of subsections (5)(b) and (6)(d) and (f) of this section shall apply to a long-term care insurance policy or certificate issued on and after January 16, 2003.

(11) A premium charged for a policy or certificate, which contains a nonforfeiture benefit or a contingent benefit upon lapse shall be subject to the loss ratio requirements established in Section 16 or 17 of this administrative regulation, as applicable, treating the policy as a whole.

(12) To determine if a contingent benefit upon lapse provision as identified in subsection (6)(c) or (d) of this section is triggered, a replacing insurer, which purchased or assumed a block of long-term care insurance policies from an insurer, shall calculate the percent increase based on the initial annual premium paid by the insured on the date the policy was purchased from the original insurer.

(13) For a qualified long-term care insurance contract, which is a level premium contract, the nonforfeiture benefit offered by an insurer shall:

(a) Be appropriately captioned;

(b) Indicate that the nonforfeiture benefit is available if a default in the premium payment occurs;

(c) State that the amount of the benefit may be adjusted subsequent to being initially granted, as necessary, to reflect a change in claims, persistency, and interest as reflected in a change in a rate for a premium paying contract approved by the commissioner for the identical contract form; and

(d) Provide at least one (1) of the following:

1. Reduced paid up insurance;

2. Extended term insurance;

3. Shortened benefit period; or

4. An offering, which is:

a. Similar to an offering as identified in subparagraphs 1, 2, or 3 of this paragraph; and

b. Approved by the commissioner.

Section 26. Standards for Benefit Triggers. (1) A long-term



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Care insurance policy shall condition the payment of benefits based upon a determination of the insured's:

- (a) Ability to perform activities of daily living; and
- (b) Cognitive impairment.

(2) Eligibility for the payment of benefits shall not be more restrictive than requiring: [:]

(a) A deficiency in the ability to perform no more than three (3) activities of daily living; or

(b) The presence of cognitive impairment.

(3) (a) Activities of daily living shall include no less than the activities defined in Section 2(1) of this administrative regulation and the policy; and

(b) To trigger covered benefits, an insurer may use activities of daily living, which are:

1. Described in paragraph (a) of this subsection; and

2. In addition to activities identified in paragraph (a) if defined in the policy.

(4)(a) An insurer may use a provision other than activities of daily living as identified in subsection (3) of this section to determine the date benefits are payable under a policy or certificate; and

(b) If a provision as established in paragraph (a) of this subsection is used by the insurer, the provision shall not:

1. Restrict the requirements identified in subsections (1), (2), and (3) of this section; and

2. Be used in lieu of the requirements of subsections (1), (2), and (3) of this section.

(5) A determination of a deficiency, as identified in this section, shall not be more restrictive than:

(a) Requiring the hands on assistance of another person to perform the prescribed activities of daily living as identified in subsection (3) of this section; or

(b) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(6) An assessment of an insured's activities of daily living and cognitive impairment shall be performed by a licensed or certified professional, including a:

(a) Physician;

(b) Nurse; or

(c) Social worker.

(7) A long-term care insurance policy shall include a clear description of the process for an appeal and resolution of a benefit determination.

(8) The requirements identified in this section:

(a) Except as provided in paragraph (b) of this subsection, shall apply to a long-term care policy issued in Kentucky on or after July 15, 2002; and [:]

(b) Shall not apply to a certificate under a group long-term care insurance policy, as identified in KRS 304.14-600(5)(a), which was in force before July 15, 2003.

Section 27. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts. (1) A qualified long-term care insurance contract shall pay for a qualified long-term care service received by a chronically-ill individual if the service is provided in accordance with a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract shall condition the payment of benefits on a certified determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to:

(a) A loss of functional capacity; or

(b) Severe cognitive impairment.

(3) A certification as required pursuant to subsection (2) of this section:

(a) Shall be performed by a licensed or certified professional, including a licensed health care practitioner; and

(b) May be performed at the direction of an insurer, if the certification is reasonably necessary to determine payment for a specific claim.

(4) If a licensed health care practitioner certified that an insured is unable to perform activities of daily living for an expected period of time of at least ninety (90) days due to a loss of functional ca-

capacity and the insured is in claim status:

(a) The certification performed pursuant to subsection (3)(b) of this section shall not be rescinded; and

(b) An additional certification shall not be performed until the ninety (90) day period has expired.

(5) A qualified long-term care insurance contract shall include a clear description of the process for the appeal and resolution of a dispute regarding a benefit determination.

Section 28. Standard Format and Content of an Outline of Coverage. Pursuant to the requirements of KRS 304.14-615(7):

(1) An outline of coverage shall:

(a) Be a freestanding document, which is printed in no less than ten (10) point type; and

(b) Not contain material of an advertising nature.

(2) Text, which is capitalized or underscored in the standard format outline of coverage, may be emphasized by using a method, which provides prominence equivalent to the:

(a) Capitalization; or

(b) Underscoring.

(3) Except as indicated, use of the text and sequence of text shall be:

(a) Mandatory; and

(b) Consistent with the Outline of Coverage, HIPMC-LTC-7.

(5) The format to be used for the outline of coverage shall be Consistent with the Outline of Coverage, HIPMC-LTC-7.

Section 29. Requirement to Deliver Shopper's Guide. (1) A long-term care insurance shopper's guide developed by the National Association of Insurance Commissioners, which is available at [www.naic.org](http://www.naic.org), or a guide developed or approved by the commissioner, shall be provided to a prospective applicant of a long-term care insurance policy or certificate.

(a) For agent solicitation, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) For direct response solicitation, an insurer shall deliver the shopper's guide in conjunction with an application or enrollment form.

(2) An insurer offering a life insurance policy or rider, which includes accelerated long-term care benefits shall:

(a) Not be required to provide a shopper's guide as identified in subsection (1) of this section; and

(b) Provide a policy summary, including a:

1. Statement, which establishes that a long-term care inflation protection option as identified in Section 10 of this administrative regulation is not available under the policy; and

2. Items as identified and required under KRS 304.14-615(9).

Section 30. Penalties. An insurer or agent, who is identified as violating a requirement of Kentucky Insurance Code relating to the regulation or marketing of long-term care insurance shall be subject to the greater of:

(1) A fine of up to three (3) times the amount of a commission paid for each policy involved in the violation or up to \$10,000; or

(2) A penalty as identified in KRS Chapter 304, subtitles 3, 9, 12, 14, 17, and 99, and this administrative regulation.

Section 31. Permitted Compensation Arrangements. (1) Upon replacement the replacing insurer shall not provide compensation to its agents or other producers greater than 200% of the renewal compensation payable by the replacing insurer on renewal policies.

(2) A commission or other compensation provided in subsequent renewal years by the replacing insurer shall be:

(a) The same as that provided in the second year or period; and (b) Provided for a reasonable number of renewal years.

(3) If long-term care insurance is provided under annuities or life insurance policies or riders, the requirements of this section shall apply only to the commissions or other compensation attributable to the long-term care insurance provided by these policies or riders.

Section 32.[30.] Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Long-term Care Insurance Personal Worksheet, HIPMC-

LTC-1", 09/2008:

(b) "Long-term Care Insurance Potential Rate Increase Disclosure Form, HIPMC-LTC-2", 09/2008;

(c) "Rescission Reporting Form for Long-term Care Policies, HIPMC-LTC-3", 09/2008;

(d) "Claims Denial Reporting Form for Long-term Care Insurance, HIPMC-LTC-4", 09/01;

(e) "Things You Should Know Before You Buy Long-term Care Insurance, HIPMC-LTC-5", 09/2008;

(f) "Long-term Care Insurance Suitability Letter, HIPMC-LTC-6", 09/2008;

(h) "Outline of Coverage, HIPMC-LTC-7", 09/2008;

(i) "Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-term Care Insurance, HIPMC-LTC-8", 09/2008;

(j) "Notice to Applicant Regarding Replacement of Accident and Sickness or Long-term Care Insurance, HIPMC-LTC-9", 09/2008;

(k) "Disclosures and Language for Long-term Care Policies and Certificates, HIPMC-LTC-10", 09/2008; and

(l) "Long-term Care insurance replacement and lapse reporting form, HIPMC-LTC-11", 09/2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department's Web site at <http://insurance.ky.gov>. [Section 1. Definitions. (1) "Applicant" is defined in KRS 304.14-600(3).

(2) "Attained age rating" means a schedule of premiums starting from the issue date which increases age at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50).

(3) "Certificate" is defined in KRS 304.14-600(4).

(4) "Chronically ill—individual", pursuant to 26 U.S.C. 7702B(c)(2):

(a) Means any individual who has been certified by a licensed health care practitioner as:

1. Being unable to perform without substantial assistance from another individual at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or

2. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; and

(b) Shall not include an individual otherwise meeting these requirements unless within the preceding twelve (12) month period a licensed health care practitioner has certified that the individual meets these requirements.

(5) "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(6) "Cold lead advertising" means the use of any method of marketing which fails to disclose in a clear, easy to notice manner that a purpose of the method of marketing is solicitation of insurance and contact will be made by an insurance agent or insurance company.

(7) "Commissioner" means the Commissioner of Insurance.

(8) "Denied claim" means the insurer refuses to pay a claim for any reason except for failure to meet the waiting period or due to an applicable preexisting condition.

(9) "Department" means the Department of Insurance.

(10) "Exceptional increase" means a premium rate increase filed by an insurer as exceptional, which the commissioner determines is necessary and justified due to:

(a) Changes in Kentucky laws or administrative regulations applicable to long-term care coverage; or

(b) increased and unexpected utilization that affects the majority of insurers of similar products.

(11) "Group long-term care insurance" is defined in KRS 304.14-600(5).

(12) "High pressure tactics" means employing any method of marketing that may affect or induce the purchase of insurance

through force, fright, explicit or implied threat, or create undue pressure to purchase or recommend the purchase of insurance.

(13) "Incidental" is defined in KRS 304.14-600(1).

(14) "Individually-identifiable information" means person information gathered in connection with an insurance transaction from which judgment may be made regarding an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or other personal characteristics including an individual's name, address, and medical record information.

(15) "Insurer" is defined in KRS 304.1-040.

(16) "Interlocking directorates" means two (2) separate boards of directors that have at least one (1) director in common.

(17) "Kentucky insurance code" means the statutes referenced in KRS 304.1-010 and the administrative regulations established in KAR Title 806.

(18) "Licensed health care practitioner" means a physician as defined in 42 U.S.C. 1395x(r), registered nurse, licensed social worker, or other individual who meets the requirements of 26 U.S.C. 7702B(c)(4).

(19) "Limited distribution channel" means a discrete entity, including a financial institution or brokerage, through which a specialized product is made available to a purchaser other than the general public.

(20) "Long-term care benefits classifications" means:

(a) Institutional long-term care benefits only;

(b) Noninstitutional long-term care benefits only; or

(c) Comprehensive long-term care benefits.

(21) "Long-term care insurance" is defined in KRS 304.14-600(2).

(22) "Maintenance or personal care services" means care for which the primary purpose is the provision of needed assistance with a disability as a result of which the individual is a chronically-ill individual, including protection from threats to health and safety due to severe cognitive impairment.

(23) "Managed care plan" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

(24) "Misrepresentation" means misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(25) "Policy" is defined in KRS 304.14-600(6).

(26) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(27) "Qualified long-term care insurance contract" or "federally-tax-qualified long-term care insurance contract" means:

(a) An individual or group insurance contract that meets the requirements of 26 U.S.C. 7702B(b) as follows:

1. The insurance protection provided under the contract shall be limited to coverage of qualified long-term care services and the contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

2.a. The contract shall not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, 42 U.S.C. 1395 et seq., or would be reimbursable except for the application of a deductible or coinsurance amount;

b. The requirements of this subparagraph shall not apply to expenses that are reimbursable under 42 U.S.C. 1395 et seq. as a secondary payor; and

c. The contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

3. The contract shall be guaranteed renewable, as established in 26 U.S.C. 7702B(b)(1)(C);

4. The contract shall not provide for a cash surrender value or other money that may be paid, assigned, pledged as collateral for a loan, or borrowed except as required in subparagraph 5 of this paragraph;

5. Refunds of premiums and policyholder dividends or similar amounts under the contract shall be applied as a reduction in future premiums or to increase future benefits, except that a refund

upon death of the insured, a complete surrender, or cancellation of the contract shall not exceed the aggregate premiums paid under the contract; and

6. The contract shall meet the consumer protection provisions as established in 26 U.S.C. 7702B(g); or

(b) The portion of a life insurance contract that:

1. Provides long-term care insurance coverage by rider or as part of the contract; and

2. Meets the requirements of 26 U.S.C. 7702B(b) and (c).

(28) "Qualified long-term care services" means services required in 26 U.S.C. 7702B(c)(1), including necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(29) "Similar policy forms" means:

(a) Long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered; or

(b) Certificates of groups, as identified in KRS 304.14-600(5)(a) similar to other comparable certificates of groups that meet the definition in KRS 304.14-600(5)(a) with the same long-term care benefit classifications.

(30) "Twisting" means knowingly making a misleading representation or incomplete or fraudulent comparison of insurance policies or insurers for the purpose of inducing, or tending to induce, a person to:

(a) Lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy; or

(b) Secure an insurance policy from another insurer.

Section 2. Policy Definitions. A long-term care insurance policy delivered or issued for delivery in Kentucky shall not include the following terms unless the terms are defined in the policy and the definitions satisfy the following requirements:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means that the individual is medically unstable and requires frequent monitoring by medical professionals, including physicians and registered nurses, in order to maintain health status.

(3) "Adult day care" means a program for four (4) or more individuals, of social or health-related, or both, services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who may benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath, or in a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(6) "Continence" means the ability to maintain control of bowel and bladder function, or, if unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

(10) "Home health care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.

(11) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the

Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(12) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(13) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care", "intermediate care", "personal care", "home care", and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care shall be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of bed, chair, or wheelchair.

(17) All providers of services, including but not limited to "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", and "home care agency", shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this administrative regulation.

(a) A long-term care insurance policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only if the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and if the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only if the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(d) The term "level premium" may only be used if the insurer does not have the right to change the premium.

(e) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of 26 U.S.C. 7702B(b)(1)(C).

(2) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(a) Preexisting conditions or diseases in accordance with KRS 304.14-615(3)(d);

(b) Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;

(c) Alcoholism and drug addiction;

(d) Illness, treatment, or medical condition arising out of:

1. War or act of war (whether declared or undeclared);

2. Participation in a felony, riot, or insurrection;

3. Service in the armed forces or auxiliary units;

4. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

5. Aviation (this exclusion shall apply only to nonfare-paying passengers);

(e) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(f) If a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under 42 U.S.C. 1395 et seq. or would be so reimbursable

except for the application of a deductible or coinsurance amount; and

(g) This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

(3) Extension of benefits.

(a) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination.

(b) The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits, and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or conversion. Group long-term care insurance issued in Kentucky on or after the effective date of this administrative regulation shall provide a covered individual with a basis for continuation or conversion of coverage:

(a) A policy provision shall provide for continued coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.

1. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy; and

2. The executive director shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(b) A policy provision shall provide that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced) shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

1. A converted policy shall be an individual policy of long-term care insurance that provides benefits identical to or benefits determined by the executive director to be substantially similar to or in excess of those provided under the group policy from which conversion is made.

2. If the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the executive director, in making a determination as to the substantial similarity of benefits, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(c) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days after the notice of the right to conversion health insurance is given by the insurer, pursuant to KRS 304.18-110(9).

(d) A converted policy shall be issued effective on the date of termination of coverage under the group policy, and shall be renewable annually.

(e) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. If the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(f) Continuation of coverage or issuance of a converted policy shall be mandatory, except if:

1. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

2. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

a. Providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

b. The premium for which is calculated in a manner consistent with the requirements of paragraph (e) of this subsection.

(g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if:

1. The benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses; and

2. The converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) A converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(i) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon his relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(5) Discontinuance and replacement.

(a) If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination.

(b) Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:

1. Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

2. Vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.

(6)(a) The premium charged to an insured for long-term care insurance shall not increase due to either:

1. The increasing age of the insured at ages beyond sixty-five (65); or

2. The duration the insured has been covered under the policy.

(b) The purchase of additional coverage shall not be considered a premium rate increase, except for the calculation required under Section 22 of this administrative regulation, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(c) A reduction in benefits shall not be considered a premium change, except for the calculation required under Section 22 of this administrative regulation, the initial annual premium shall be based on the reduced benefits.

(7) Electronic enrollment for group policies.

(a) A requirement that a signature of a group long-term care insurance insured be obtained by an agent or insurer shall be deemed satisfied if:

1. The consent is obtained by a telephonic or electronic enrollment by the group policyholder or insurer;

2. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records; and

3. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually-identifiable health information is maintained.

(b) A verification of enrollment information shall be provided to the enrollee.

(c) An insurer shall make available, upon request of the executive director, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

Section 4. Unintentional Lapse. An insurer offering long-term

care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination.

1. An individual long-term care policy or certificate shall not be issued until the insurer has received from the applicant either a written:

a. Designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or

b. Waiver, dated and signed by the applicant, electing not to designate additional persons to receive notice.

2. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured.

3. The form used for the written designation shall provide space clearly designated for listing at least one (1) person.

4. The designation shall include each person's full name and home address.

5. If an applicant elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one (1) person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

6. The insurer shall notify the insured of the right to change a written designation, no less often than once every two (2) years.

(b)1. If a policy holder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements of paragraph (a) of this subsection shall not need to be met until sixty (60) days after the policyholder or certificate holder is no longer on the payment plan.

2. The application or enrollment form for the policies or certificates shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium.

1. An individual long-term care policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to paragraph (a) of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination.

2. Notice shall:

a. Be given by first class United States mail, postage prepaid;

b. Not be given until thirty (30) days after a premium is due and unpaid; and

c. Be deemed to have been given as of five (5) days after the date of mailing.

(2) Reinstatement. In addition to the requirement in subsection (1) of this section, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, if lapse occurs, if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.

(a) This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, if appropriate.

(b) The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

Section 5. Required Disclosure Provisions. (1) Renewability.

(a) Individual long-term care insurance policies shall contain a renewability provision.

(b) The provision shall:

1. Be appropriately captioned;

2. Appear on the first page of the policy; and

3. State clearly that the coverage is guaranteed renewable or noncancellable.

(c) This subsection shall not apply to policies which do not contain a renewability provision, and under which the right to non-

renew is reserved solely to the policyholder.

(d) A long-term care insurance policy or certificate, other than one (1) in which the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2) Riders and endorsements.

(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, a rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of these terms in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in KRS 304.14-615(4)(b) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of tax consequences.

(a) A disclosure statement shall be required, as specified in paragraphs (b), (c) and (d) of this subsection, for life insurance policies which provide benefits which are accelerated for long-term care.

(b) The disclosure statement shall be required both at the time:

1. Of application for the policy or rider; and

2. The benefit payment request is submitted.

(c) The statement shall disclose that:

1. Receipt of the benefits may be taxable; and

2. Assistance should be sought from a personal tax advisor.

(d) The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

(e) This subsection shall not apply to qualified long-term care insurance contracts.

(7) Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits".

(a) Any additional benefit triggers shall also be explained in this section of the policy or certificate.

(b) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.

(c) If an attending physician or other specified person must certify a certain level of functional dependency in order to determine eligibility for benefits, this too shall be specified.

(8) A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage, as contained in Section 25(5)(c) of this administrative regulation, that the policy is intended to be a qualified long-term care insurance contract under 29 U.S.C. 7702B(b).

(9) A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of cov-

erage, as contained in Section 25(5)(c) of this administrative regulation, that the policy is not intended to be a qualified long-term care insurance contract.

Section 6. Required Disclosure of Rating Practices to Consumers. (1) Except as provided in subsection (2) of this section, this section shall apply to any long-term care policy or certificate issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.

(2) For a certificate issued on or after the effective date of this administrative regulation under a group long-term care insurance policy, which policy was in force at the time this administrative regulation became effective, the provisions of this section shall apply on the policy anniversary following twelve (12) months after the effective date of this administrative regulation.

(3) Except for a policy for which no applicable premium rate or rate schedule increases can be made, an insurer shall provide all of the information listed in this subsection to the applicant when application or enrollment occurs, unless the method of application does not allow for delivery at that time:

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions, and the policyholder's or certificate holder's option if a premium rate is revised;

(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:

1. A description of when premium rate or rate schedule adjustments will be effective, such as the next anniversary date or next billing date; and

2. The right to a revised premium rate or rate schedule as provided in subsection (2) of this section if the premium rate or rate schedule is changed; and

(e) 1. Information regarding each premium rate increase on the current policy form or similar policy forms over the past ten (10) years for Kentucky or any other state that, at a minimum, shall identify:

a. The policy forms for which premium rates have been increased;

b. The calendar years when the form was available for purchase; and

c. The amount or percent of each increase. The percentage may be expressed as:

(i) A percentage of the premium rate prior to the increase; or

(ii) Minimum and maximum percentages if the rate increase is variable by rating characteristics.

2. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

3. An insurer may exclude from the disclosure premium rate increases that occurred prior to the acquisition of and that only apply to:

a. Blocks of business acquired from other nonaffiliated insurers; or

b. The long-term care policies acquired from other nonaffiliated insurers.

4. If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers and if those increases occurred prior to the acquisition on or before the later of the effective date of this administrative regulation or the end of a twenty-four (24) month period following the acquisition of the block of business or policies, the acquiring insurer may exclude that rate increase from the disclosure.

a. The rate increase that may be excluded pursuant to this subparagraph shall be disclosed by the nonaffiliated selling company in accordance with subparagraph 1 of this paragraph.

b. If the acquiring insurer files for a subsequent rate increase, even within the twenty-four (24) month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by this paragraph, including disclosure of the earlier rate increase.

(4) If the method of application does not allow for delivery when application or enrollment occurs, the information listed in subsection (3) of this section shall be delivered to the applicant no later than when the policy or certificate is delivered.

(5) An applicant shall sign an acknowledgement when application occurs, unless the method of application does not allow signature at that time, that the insurer made the disclosure required under subsection (3)(a) and (e) of this section.

(6) If the method of application does not allow signature when application occurs in accordance with subsection (5) of this section, the applicant shall sign an acknowledgement no later than when the policy or certificate is delivered.

(7) An insurer shall use forms HIPMC-LTC-1 (09/01) and HIPMC-LTC-2 (09/01), incorporated by reference in this administrative regulation, to comply with the requirements of subsections (3) and (5) of this section.

(8) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer.

(9) The notice required, pursuant to subsection (8) of this section, shall include the information required by subsection (3) of this section when the rate increase is implemented.

Section 7. Initial Filing Requirements. (1) This section shall apply to any long-term care policy issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.

(2) An insurer shall provide the information listed in this subsection to the executive director in accordance with the time period set forth in KRS 304.14-120(2):

(a) A copy of the disclosure documents required in Section 6 of this administrative regulation; and

(b) An actuarial certification consisting of at least the following:

1. A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

2. A statement that the policy design and coverage provided have been reviewed and taken into consideration;

3. A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

4. A complete description of the basis for contract reserves that are anticipated to be held under the form, including:

a. Sufficient detail or sample calculations to depict completely the reserve amounts to be held;

b. A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

c. A statement that the net valuation premium for renewal years does not increase, except for attained-age rating if permitted; and

d. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if the statement cannot be made, a complete description of the situations in which this does not occur.

(i) An aggregate distribution of anticipated issues may be used if the underlying gross premiums maintain a reasonably-consistent relationship;

(ii) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the executive director may request a demonstration under subsection (3) of this section based on a standard age distribution; and

5.a. A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The executive director may request an actuarial demonstration that benefits are reasonable in relation to premiums which shall include premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant

and creditable data from other studies, or both.

**Section 8. Prohibition Against Postclaims Underwriting.** (1) Applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(3) Except for policies or certificates which are guaranteed issue:

(a) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: "Caution: If your answers on this application, to the best of your knowledge and belief, are incorrect or untrue, (insurer name) has the right to deny benefits or rescind your policy."

(b) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate when it is delivered: "Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following:

1. A report of a physical examination;
2. An assessment of functional capacity;
3. An attending physician's statement; or
4. Copies of medical records.

(4) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than when the policy or certificate is delivered unless it was retained by the applicant when the applicant applied.

(5) Every insurer issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both Kentucky and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the executive director in the form incorporated by reference in this administrative regulation as HIPMC-LTC-3 (09/01).

**Section 9. Minimum Standards for Home Health and Community Care Benefits in Long-term Care Insurance Policies.** (1) If a long-term care insurance policy or certificate provides benefits for home health care or community care services, it shall not limit or exclude benefits by:

(a) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

(b) Requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a home, community, or institutional setting before home health care services are covered;

(c) Limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of his licensure or certification;

(e) Excluding coverage for personal care services provided by a home health aide;

(f) Requiring that the provision of home health care services be

at a level of certification or licensure greater than that required by the eligible service;

(g) Requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) Limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) Excluding coverage for adult day care services.

(2) If a long-term care insurance policy or certificate provides for home health or community care services, it shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year's coverage available for nursing home benefits under the policy or certificate, when covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate if determining maximum coverage under the terms of the policy or certificate.

**Section 10. Requirement to Offer Inflation Protection.** (1) An insurer shall not offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or a policy that provides for an increase in the period of coverage which shall meet anticipated increases in the costs of long-term care services covered by the policy. Insurers shall offer to each policyholder, when the policy is purchased, the option to purchase a policy with an inflation protection feature no less favorable than one (1) of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five (5) percent;

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status if the option for the previous period has not been declined. The amount of the additional benefit shall not be less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five (5) percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) If the policy is issued to a group, the required offer in subsection (1) of this section shall be made to the group policyholder, but if the policy is issued to a group defined in KRS 304.14-600(4)(d) other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4) Insurers shall include the following information in or with the outline of coverage. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(a) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period; and

(b) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(5) Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status, or claim history, or the length of time the person has been insured under the policy.

(6) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as provided in subsection (1)(a) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed

by the policyholder as required in this subsection.

(b) The rejection, which may be either in the application or in a separate form, shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans \_\_\_\_\_, and I reject inflation protection."

Section 11. Requirements for Application Forms and Replacement Coverage. (1)(a) Application forms shall include questions designed to elicit information as to whether:

1. The applicant has another long-term care insurance policy or certificate in force as of the date of application; or

2. A long-term care insurance policy or certificate is intended to replace:

a. Any other accident and sickness policy or certificate presently in force; or

b. Any other long-term care policy or certificate presently in force.

(b) Except if coverage is sold without an agent, a supplementary application or other form, containing the questions required by this section, may be used if signed by the:

1. Applicant; and

2. Agent.

(c) If a replacement policy is issued to a group, as defined by KRS 304.14-600(4)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the certificate holder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force (including health-care service contract or health maintenance organization contract)?

2. Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

a. If so, with which company?

b. If that policy lapsed, when did it lapse?

3. Are you covered by Medicaid?

4. Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

(2) Agents shall list other health insurance policies they have sold to the applicant which:

(a) Are still in force; and

(b) Were sold in the past five (5) years but are no longer in force.

(3) Solicitations other than direct response.

(a) Upon determining that a sale will involve replacement, an insurer (other than an insurer using direct response solicitation methods or its agent) shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage.

(b) One (1) copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer.

(c) The notice shall be provided as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF INDIVIDUAL ACCIDENT AND SICKNESS OR  
LONG-TERM CARE INSURANCE

(Insurer's name and address)

SAVE THIS NOTICE!

IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after

due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT (BROKER OR OTHER REPRESENTATIVE):

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

Signature of Agent, Broker, or Other Representative:

Typed Name and Address of Agent or Broker:

The above "Notice to Applicant" was delivered to me on:

Date:

Applicant's Signature:

(4) Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant when it is determined that a sale will involve a replacement. The notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF ACCIDENT AND SICKNESS OR  
LONG-TERM CARE INSURANCE

(Insurer's name and address)

SAVE THIS NOTICE!

IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to



preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent the time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insurer name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

Insurer Name:

(5) If replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. The notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(6) Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy.

(a) If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of 806 KAR 12:080.

(b) If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

Section 12. Reporting Requirements. (1) An insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(2) An insurer shall report annually by June 30 the ten (10) percent of its agents with the greatest percentages of lapses and replacements as measured by subsection (1) of this section.

(3) Reported replacement and lapse rates shall not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports shall be for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(4) An insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(5) An insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(6) An insurer shall report annually by June 30, by completing and filing HIPMC-LTC-4 (09/01), incorporated by reference in this administrative regulation, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied.

(7) All reports shall be made on a statewide basis.

(8) All reports required by this section shall be filed with the executive director.

Section 13. Licensing. An agent shall not be authorized to market, sell, solicit, or otherwise contact a person for the purpose of marketing long-term care insurance unless the agent has demonstrated his knowledge of long-term care insurance and the appropriateness of the insurance by passing a test required by KRS 304.9-105(5)(c) and maintaining appropriate licenses.

Section 14. Reserve Standards. (1)(a) If long-term care bene-

fits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.

(b) Claim reserves shall also be established if the policy or rider is in claim status.

(c) Reserves for policies and riders subject to the requirements of this subsection may be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates.

(d) Single decrement approximations shall be acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial.

(e) The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits, except the reserves for the long-term care benefit and the life insurance benefit shall not be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(f) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations which have an impact on projected claim costs, including the following:

1. Definition of insured events;
2. Covered long-term care facilities;
3. Existence of home convalescence care coverage;
4. Definition of facilities;
5. Existence or absence of barriers to eligibility;
6. Premium waiver provision;
7. Renewability;
8. Ability to raise premiums;
9. Marketing method;
10. Underwriting procedures;
11. Claims adjustment procedures;
12. Waiting period;
13. Maximum benefit;
14. Availability of eligible facilities;
15. Margins in claim costs;
16. Optional nature of benefit;
17. Delay in eligibility for benefit;
18. Inflation protection provisions; and
19. Guaranteed insurability option.

(g) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) If long-term care benefits are provided other than as in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

Section 15. Loss Ratio. (1) This section shall apply to all long-term care insurance policies or certificates except those covered under Sections 7 and 16 of this administrative regulation.

(2) Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums if the expected loss ratio is at least sixty (60) percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- (a) Statistical credibility of incurred claims experience and earned premiums;
- (b) The period for which rates are computed to provide coverage;
- (c) Experienced and projected trends;
- (d) Concentration of experience within early policy duration;
- (e) Expected claim fluctuation;
- (f) Experience refunds, adjustments, or dividends;
- (g) Renewability features;
- (h) All appropriate expense factors;
- (i) Interest;
- (j) Experimental nature of the coverage;
- (k) Policy reserves;
- (l) Mix of business by risk classification; and
- (m) Product features such as long elimination periods, high

deductibles, and high maximum limits.

(3) Subsection (2) of this section shall not apply to life insurance policies that accelerate benefits for long-term care.

(4) A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit shall be considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of KRS 304.15-310;

(c) The policy meets the following disclosure requirements:

1. If an application for a long-term care insurance contract or certificate is approved, the insurer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval;

2. When the policy is delivered, a policy summary shall be delivered in accordance with KRS 304.14-615(9);

3. The policy summary shall state that any long-term care inflation protection option required by Section 10(1) of this administrative regulation is not available under this policy;

4. The policy summary required by subparagraph 2 of this paragraph may be incorporated into a basic illustration that meets the requirements of Section 29 of this administrative regulation; and

5. A monthly report shall be provided in accordance with KRS 304.14-615(10), when a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status;

(d) Any policy illustration meets the applicable requirements of Section 29 of this administrative regulation; and

(e) An actuarial memorandum is filed with the insurance office that includes:

1. A description of the basis on which the long-term care rates were determined;

2. A description of the basis for the reserves;

3. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

4. A description and a table of each actuarial assumption used. For expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;

5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

6. The estimated average annual premium per policy and the average issue age;

7. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

8. A description of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

Section 16. Premium Rate Schedule Increases. (1) This section shall apply as follows:

(a) Except as provided in paragraph (b) of this subsection, this section shall apply to any long-term care policy or certificate issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.

(b) For certificates issued on or after the effective date of this administrative regulation under a group long-term care insurance policy, which policy was in force at the time this administrative regulation became effective, the provisions of this section shall apply on the policy anniversary following twelve (12) months after the effective date of this administrative regulation.

(2) An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the execu-

tive director at least thirty (30) days prior to the notice to the policyholders and shall include:

(a) Information required by Section 6 of this administrative regulation;

(b) Certification by a qualified actuary that:

1. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated; and

2. The premium rate filing is in compliance with the provisions of this section;

(c) An actuarial memorandum justifying the rate schedule change request that includes:

1. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

a. Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;

b. The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

c. The projections shall demonstrate compliance with subsection (3) of this section; and

d. For exceptional increases:

(i) The projected experience shall be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(ii) If the executive director determines as provided in subsection (12)(b) of this section that offsets may exist, the insurer shall use appropriate net-projected experience;

2. Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

3. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

4. A statement that policy design, underwriting, and claims adjudication practices have been taken into consideration; and

5. If it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates;

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the executive director; and

(e) Sufficient information for review and approval of the premium rate schedule increase by the executive director.

(3) Premium rate schedule increases shall be determined in accordance with the following requirements:

(a) Exceptional increases shall provide that seventy (70) percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

1. The accumulated value of the initial earned premium times fifty-eight (58) percent;

2. Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;

3. The present value of future projected initial earned premiums times fifty-eight (58) percent; and

4. Eighty-five (85) percent of the present value of future projected premiums not included in subparagraph 3 of this paragraph on an earned basis;

(c) If a policy form has both exceptional and other increases, the values in paragraph (b)2 and 4 of this subsection shall also include seventy (70) percent for exceptional rate increase amounts; and

(d) All present and accumulated values used to determine rate

increases shall use the maximum valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(4) For each rate increase that is implemented, the insurer shall file for review by the executive director updated projections, as defined in subsection (2)(c) of this section, annually for the next three (3) years and include a comparison of actual results to projected values.

(a) The executive director may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections.

(b) For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the executive director.

(5)(a) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in subsection (2)(c)1 of this section, shall be filed for review by the executive director every five (5) years following the end of the required period in subsection (4) of this section.

(b) For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the executive director.

(6)(a) If the executive director has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (3) of this section, the executive director may require the insurer to implement any of the following:

1. Premium rate schedule adjustments; or

2. Other measures to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration shall be given to subsection (2)(c)5 of this section, if applicable.

(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) A plan, subject to executive director's approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect. If a plan is not filed, the executive director may impose the condition in subsection (8) of this section; and

(b) The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (3) of this section had the greater of the original anticipated lifetime loss ratio or fifty-eight (58) percent been used in the calculations described in subsection (3)(b)1 and 3 of this section.

(8)(a) For a rate increase filing that meets the following criteria, the executive director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms;

2. The rate increase is not an exceptional increase; and

3. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) If significant adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the executive director may determine that a rate spiral exists.

(c) Following a determination that a rate spiral exists, the executive director may require the insurer to offer, without underwrit-

ing, to all in force insureds subject to the rate increase the option to replace existing coverage with one (1) or more reasonably comparable products being offered by the insurer or its affiliates.

1. The offer shall:

a. Be subject to the approval of the executive director;

b. Be based on actuarially sound principles, except for attained age; and

c. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

2. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. If there is a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

a. The maximum rate increase determined based on the combined experience; or

b. The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten (10) percent.

(9) If the executive director determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the executive director may, in addition to the provisions of subsection (8) of this section, prohibit the insurer from either of the following:

(a) Filing and marketing comparable coverage for a period of up to five (5) years; or

(b) Offering all other similar coverages and may limit the insurer's marketing of new applications to the products subject to recent premium rate schedule increases.

(10) Subsections (1) through (9) of this section shall not apply to policies for which the long-term care benefits provided by the policy are incidental, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

1. KRS 304.15-310;

2. KRS 304.15-315;

3. 806 KAR 15:010; and

4. 806 KAR 15:030;

(c) The policy meets the disclosure requirements of Section 15(4)(c) of this administrative regulation;

(d) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

1. Policy illustrations that meet the requirements of Section 29 of this administrative regulation; and

2. Disclosure requirements in 806 KAR 15:010 and 806 KAR 15:030; and

(e) An actuarial memorandum is filed with the insurance office that includes:

1. A description of the basis on which the long-term care rates were determined;

2. A description of the basis for the reserves;

3. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

4. A description and a table of each actuarial assumption used. For expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;

5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

6. The estimated average annual premium per policy and the average issue age;

7. A statement as to whether underwriting is performed at the time of application.

a. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting; and

b. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

8. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(11) Subsections (6) and (8) of this section shall not apply to group insurance policies if:

(a) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) The policyholder, and not the certificate holders, pays a material portion of the premium, which shall not be less than twenty (20) percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

(12) The executive director:

(a) May request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase; and

(b) In determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claim costs.

Section 17. Filing Requirement for a Group Policy Issued in Another State. Prior to an insurer offering group long-term care insurance issued in another state to a resident of Kentucky pursuant to KRS 304.14-610, it shall file with the executive director evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in Kentucky.

Section 18. Filing Requirements for Advertising. (1) Every insurer providing long-term care insurance or benefits in Kentucky shall provide a copy of any long-term care insurance advertisement intended for use in Kentucky whether through written, radio, or television medium to the executive director for review or approval by the executive director in accordance with KRS 304.14-620; and

(2) All advertisements shall be retained by the insurer for at least three (3) years from the date the advertisement was first used.

Section 19. Standards for Marketing. (1) Every insurer marketing long-term care insurance coverage in this state, directly or through its agents, shall:

(a) Establish marketing procedures and agent training requirements to assure that:

1. Any marketing activities, including any comparison of policies, by its agent or other producers will be fair and accurate; and  
2. Excessive insurance is not sold or issued.

(b) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(c) Provide to the applicant copies of the disclosure forms required in Section 6(7) of this administrative regulation.

(d) Inquire and otherwise make every reasonable effort to identify:

1. Whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance; and

2. The types and amounts of this insurance.

(e) For qualified long-term care insurance contracts, not be required to make an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance, in accordance with paragraph (d) of this section.

(f) Establish auditable procedures for verifying compliance with the requirements of this subsection.

(g) At solicitation, provide written notice to the prospective policyholder and certificate holder that:

1. Kentucky's Insurance Programs for Seniors (KIPS) is available

and the address and telephone number of the program; and

2. The Kentucky State Health Insurance Assistance Program (SHIP) is available and the address and telephone number of the program.

(h) For long-term care insurance policies and certificates, use the terms, "noncancellable" or "level premium" only if the policy or certificate conforms to Section 3(1)(c) and (d) of this administrative regulation.

(i) Provide an explanation of contingent benefit upon lapse provided for in Section 22(4)(c) of this administrative regulation.

(2) In addition to the practices prohibited in KRS Chapter 304.12, the following acts and practices shall be prohibited:

(a) Twisting;

(b) High pressure tactics;

(c) Cold lead advertising; and

(d) Misrepresentation.

(3)(a) With respect to the obligations set forth in this subsection, the primary responsibility of an association, as defined in KRS 304.14-600(4)(b), if endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions.

(b) Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by the associations to ensure that members of the associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(c) The insurer shall file with the insurance office the following material:

1. The policy and certificate;

2. A corresponding outline of coverage; and

3. All advertisements requested by the insurance office pursuant to Section 18(1) of this administrative regulation.

(d) The association shall disclose in any long-term care insurance solicitation:

1. The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees, and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

2. A brief description of the process under which the policies and the insurer issuing the policies were selected.

(e) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

(f) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies and the compensation arrangements made with the insurer.

(g) Except for qualified long-term care insurance contracts, the association shall also:

1. At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter if there is a material change;

2. Actively monitor the marketing efforts of the insurer and its agents; and

3. Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

(h) A group long-term care insurance policy or certificate shall not be issued to an association unless the insurer files with the executive director the information required in this subsection.

(i) An insurer shall not issue a long-term care policy or certificate to an association or continue to market the policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this subsection.

(j) Failure to comply with the filing and certification requirements of this section shall constitute an unfair trade practice in violation of KRS 304.12-130.

Section 20. Suitability. (1) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

(2) An insurer marketing long-term care insurance shall:

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(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Train its agents in the use of its suitability standards; and

(c) Maintain a copy of its suitability standards and make them available for inspection upon request by the executive director.

(3)(a) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:

1. The applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

2. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

3. The values, benefits, and costs of the applicant's existing insurance, if any, as compared to the values, benefits, and costs of the recommended purchase or replacement.

(b) The insurer, and if an agent is involved, the agent, shall make reasonable efforts to obtain the information set out in paragraph (a) of this subsection.

1. The insurer shall present to the applicant, at or prior to application, a "Long-term Care Insurance Personal Worksheet", HIPMC-LTC-1 (09/01), incorporated by reference in this administrative regulation.

2. The information in the format contained in HIPMC-LTC-1 (09/01) shall be in not less than twelve (12) point type.

(c) The issuer may request the applicant to provide additional information to comply with its suitability standards.

(d) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(e) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet shall be prohibited.

(4) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(5) An agent shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(6) When the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-term Care Insurance", incorporated by reference in this administrative regulation as HIPMC-LTC-5 (09/01) shall be provided.

(7) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer shall:

(a) Reject the application; or

(b) Send to the applicant a:

1. "Long-term Care Suitability Letter", incorporated by reference in this administrative regulation as HIPMC-LTC-6 (09/01); or

2. Letter approved by the executive director as being similar to the HIPMC-LTC-6 (09/01).

(8) If the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent.

(9) Either the applicant's returned HIPMC-LTC-6 (09/01) or a record of the alternative method of verification shall be made part of the applicant's file.

(10) The insurer shall report annually to the executive director:

(a) The total number of applications received from Kentucky residents;

(b) The number of those applicants who declined to provide information on the personal worksheet;

(c) The number of those applicants who did not meet the suitability standards; and

(d) The number of those applicants who chose to confirm after receiving a suitability letter.

**Section 21. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates.** If a

long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

**Section 22. Nonforfeiture Benefit Requirement.** (1) This section shall not apply to life insurance policies or riders containing accelerated long-term care benefits.

(2) Except as provided in subsection (3) of this section, a long-term care insurance policy shall not be delivered or issued for delivery unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit.

(a) The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy.

(b) If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rate.

(3) If a group long-term care insurance policy is issued, the offer required in subsection (2) of this section shall be made to:

(a) The group policyholder; or

(b) If the policy is issued as group long-term care insurance, as defined in KRS 304.14-600(4)(d), other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

(4) A nonforfeiture benefit offer pursuant to subsection (2) of this section shall meet the following requirements:

(a) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits;

(b) The nonforfeiture benefit included in the offer shall be the benefit described in subsection (5) of this section; and

(c) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage required pursuant to KRS 304.14-615(7), or other materials given to the prospective policyholder.

(5) If the offer required to be made under subsection (2) of this section is rejected, the insurer shall provide the contingent benefit upon lapse described in subsection (6) of this section.

(6)(a) After rejection of the offer required under subsection (2) of this section, for individual and group policies without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.

(b) If a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in this paragraph based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased:

Triggers for a Substantial Premium Increase	
Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%

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65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(d) Unless otherwise required by Section 6(8) of this administrative regulation, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase, set forth in paragraph (c) of this subsection.

(e) On or before the effective date of a substantial premium increase as defined in paragraph (c) of this subsection, an insurer shall:

1. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

2. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (5) of this section. This option may be elected at any time during the 120-day period referenced in paragraph (c) of this subsection; and

3. Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in paragraph (c) of this subsection shall be deemed to be the election of the offer to convert in subparagraph 2 of this paragraph.

(7) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, shall be as described in this subsection:

- (a) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) shall be payable for a qualifying claim, except the lifetime maximum dollars or days of benefits shall be determined as specified in paragraph (b) of this subsection.

- (b) The standard nonforfeiture credit shall be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits.

1. An insurer may offer additional shortened benefit period options, if the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration;

2. The minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse; and

3. The calculation of the nonforfeiture credit shall be subject to the limitation of subsection (6) of this section.

- (c)1. Except as provided by subparagraph 2 of this paragraph, the nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three (3) years and thereafter.

2. Notwithstanding subparagraph 1 of this paragraph, for a policy or certificate with attained age rating, the nonforfeiture bene-

fit shall begin on the earlier of:

- a. The end of the tenth year following the policy or certificate issue date; or

- b. The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(d) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(8) All benefits paid by an insurer while the policy or certificate is in premium paying status and in the paid up status shall not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

(9) There shall not be a difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

(10) The requirements set forth in this section shall apply twelve (12) months after the effective date of this administrative regulation:

- (a) Except as provided in paragraph (b) of this subsection, the provisions of this section shall apply to any long-term care policy issued in Kentucky on or after the effective date of this administrative regulation.

- (b) For certificates issued on or after the effective date of this administrative regulation, under a group long-term care insurance policy in force at the time this administrative regulation became effective, the provisions of this section shall not apply.

(11) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section 15 of this administrative regulation, treating the policy as a whole.

(12) To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (6)(c) of this section, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(13) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

- (a) The nonforfeiture provision shall be appropriately captioned;

- (b) The nonforfeiture provision shall provide a benefit available if there is a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the executive director for the same contract form; and

- (c) The nonforfeiture provision shall provide at least one (1) of the following:

1. Reduced paid-up insurance;

2. Extended term insurance;

3. Shortened benefit period; or

4. Other similar offerings approved by the executive director.

Section 23. Standards for Benefit Triggers. (1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment.

(2) Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.

(3)(a) Activities of daily living shall include at least the following as defined in Section 2 of this administrative regulation and in the policy:

1. Bathing;

2. Continence;

3. Dressing;

4. Eating;

5. Toileting; and

6. Transferring;

(b) Insurers may use activities of daily living to trigger covered

benefits in addition to those contained in paragraph (a) of this subsection if they are defined in the policy.

(4) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate and the provisions shall not restrict, and shall not be in lieu of, the requirements contained in subsections (1), (2), and (3) of this section.

(5) For purposes of this section the determination of a deficiency shall not be more restrictive than:

(a) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) If the deficiency is due to the presence of a cognitive impairment, needing supervision or verbal cueing by another person in order to protect the insured or others.

(6) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

(7) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(8) A long-term care insurance policy shall cover services as required by KRS 304.14-617.

(9) The requirements set forth in subsections (1) through (8) of this section shall apply twelve (12) months after the effective date of this administrative regulation as follows:

(a) Except as provided in paragraph (b) of this subsection, the provisions of this section shall apply to a long-term care policy issued in Kentucky on or after the effective date of this administrative regulation.

(b) For certificates issued on or after the effective date of this administrative regulation, under a group long-term care insurance policy that was in force at the time this administrative regulation became effective, the provisions of this section shall not apply.

Section 24. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts. (1) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract shall condition the payment of benefits on a certified determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity or to severe cognitive impairment.

(3) Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (2) of this section shall be performed by a licensed health care practitioner.

(4) Certifications required pursuant to subsection (2) of this section may be performed by a licensed health care professional at the direction of the carrier if it is reasonably necessary with respect to a specific claim, except that if a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status, the certification shall not be rescinded and additional certifications shall not be performed until after the expiration of the ninety (90) day period.

(5) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

Section 25. Standard Format Outline of Coverage. This section of the administrative regulation implements, interprets, and makes specific the provisions of KRS 304.14-615(7) in prescribing a standard format and the content of an outline of coverage.

(1) The outline of coverage shall be a freestanding document, using no smaller than ten (10) point type.

(2) The outline of coverage shall not contain material of an advertising nature.

(3) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by any means which provide prominence equivalent to the capitalization or underscored.

(4) Use of the text and sequence of text of the standard format

outline of coverage shall be mandatory, except as specifically indicated.

(5) Format for outline of coverage:

(INSURER NAME)  
(ADDRESS CITY & STATE)  
(TELEPHONE NUMBER)  
LONG-TERM CARE INSURANCE  
OUTLINE OF COVERAGE  
(Policy Number or Group Master Policy and  
Certificate Number)

(Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, shall appear as follows in the outline of coverage):

Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)

(a) This policy is (an individual policy of insurance or a group policy) which was issued in the (indicate jurisdiction in which group policy was issued).

(b) PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

(c) FEDERAL TAX CONSEQUENCES.

This (policy or certificate) is intended to be a federally-tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this (policy or certificate). This (policy or certificate) is not intended to be a federally-tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the (policy or certificate) may be taxable as income.

(d) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED:

1. (For long-term care health insurance policies or certificates, one (1) of the following permissible policy renewability provisions shall be described):

a. (Policies and certificates that are guaranteed renewable shall contain the following statement:) RENEWABILITY: THIS POLICY (CERTIFICATE) IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy (certificate), to continue this policy as long as you pay your premiums on time. (Insurer) cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

b. (Policies and certificates that are noncancellable shall contain the following statement:) RENEWABILITY: THIS POLICY (CERTIFICATE) IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. (Insurer) cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, (Insurer) may increase your premium at that time for those additional benefits.

2. (For group coverage, continuation/conversion provisions applicable to the certificate and group policy shall be specifically described.)

3. (The outline of coverage shall describe waiver of premium provisions or state that there are no premium provisions.)

**(e) TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.**

(In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, the outline of coverage shall state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.)

**(f) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.**

1. (A brief description of the right to return – "free look" provision of the policy shall be provided);

2. (A statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate shall be included. If the policy contains these provisions, a description of them shall be included).

**(g) THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the insurer.

1. (For agents) Neither (insert insurer name) nor its agents represent Medicare, the federal government, or any state government.

2. (For direct response) (insert insurer name) is not representing Medicare, the federal government, or any state government.

**(h) LONG-TERM CARE COVERAGE.** Policies of this category are designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations) (waiting periods) and (coinsurance) requirements. (This paragraph shall be modified if the policy is not an indemnity policy).

**(i) BENEFITS PROVIDED BY THIS POLICY.**

1. (Covered services, related deductible(s), waiting periods, elimination periods, and benefit maximums);

2. (Institutional benefits, by skill level);

3. (Noninstitutional benefits, by skill level);

4. Eligibility for payment of benefits.

a. (Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined and described as part of the outline of coverage.)

b. (Any additional benefit triggers shall also be explained. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this shall be specified.)

**(j) LIMITATIONS AND EXCLUSIONS.**

(The outline of coverage shall describe:

1. Preexisting conditions;

2. Noneligible facilities or providers;

3. Noneligible levels of care, such as unlicensed providers, care, or treatment provided by a family member;

4. Exclusions and exceptions; and

5. Limitations).

(This section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph (i) of this subsection.)

**THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**

**(k) RELATIONSHIP OF COST OF CARE AND BENEFITS.** Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, the following shall be indicated:

1. That the benefit level will not increase over time;

2. Any automatic benefit adjustment provisions;

3. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be in-

creased over time if not by a specified amount or percentage;

4. If there is a guarantee, whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and

5. Whether there will be any additional premium charge imposed, and how that is to be calculated).

**(l) ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.**

(The outline of coverage shall state that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. It shall specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for these insureds):

**(m) PREMIUM.**

1. The total annual premium for the policy shall be stated; and

2. If the premium varies with an applicant's choice among benefit options, the portion of annual premium which corresponds to each benefit option shall be indicated.)

**(n) ADDITIONAL FEATURES.**

1. The outline of coverage shall indicate if medical underwriting is used; and

2. Describe other important features.)

**(o) CONTACT THE SENIOR HEALTH INSURANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.**

**Section 26. Requirement to Deliver Shopper's Guide.** (1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the executive director, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(a) For agent solicitations, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) For direct response solicitations, the shopper's guide shall be presented in conjunction with any application or enrollment form.

(2) Life insurance policies or riders containing accelerated long-term care benefits shall not be required to furnish the shopper's guide, except they shall furnish the policy summary required under KRS 304.14-615.

**Section 27. Penalties.** In addition to any other penalties provided by the laws of Kentucky, any insurer or agent found to have violated any requirement of Kentucky relating to the regulation or marketing of long-term care insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

**Section 28. Permitted Compensation Arrangements.** (1) Upon replacement the replacing insurer shall not provide compensation to its agents or other producers greater than 200 percent of the renewal compensation payable by the replacing insurer on renewal policies.

(2) The commission or other compensation provided in subsequent (renewal) years by the replacing insurer shall be the same as that provided in the second year or period and shall be provided for a reasonable number of renewal years.

(3) If long-term care insurance is provided under annuities or life insurance policies or riders, the requirements of this section shall apply only to the commissions or other compensation attributable to the long-term care insurance provided by these policies or riders.

**Section 29. Illustrations.** (1)(a) An illustration used in the sale of a life insurance policy that funds long-term care benefits, shall satisfy the applicable requirements of this administrative regulation, be clearly labeled "life insurance illustration", and contain the fol-



lowing basic information:

1. Name of insurer;
2. Name and business address of producer or insurer's authorized representative, if any;
3. Name, age, and sex of proposed insured, except if a composite illustration is permitted under this regulation;
4. Underwriting or rating classification upon which the illustration is based;
5. Generic name of policy, the company product name, if different, and form number;
6. Initial death benefit; and
7. Dividend option election or application of nonguaranteed elements, if applicable.

(b) If using an illustration in the sale of a life insurance policy that funds long-term care benefits, an insurer or its producers or other authorized representatives shall not:

1. Represent the policy as anything other than a life insurance policy;
2. Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
3. State or imply that the payment or amount of nonguaranteed elements is guaranteed;
4. Use an illustration that does not comply with the requirements of this administrative regulation;
5. Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
6. Provide an applicant with an incomplete illustration;
7. Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
8. Use the term "vanish" or "vanishing premium", or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;
9. Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
10. Use an illustration that is not "self-supporting".

(c) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

(2)(a) Format. A basic illustration shall conform with the following requirements:

1. The illustration shall be labeled with the date on which it was prepared;
2. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven (7) page illustration shall be labeled "page 4 of 7 pages");
3. The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified;
4. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force;
5. The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;
6. Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;
7. If the illustration shows any nonguaranteed elements, they shall not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed;
8. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page one for guaranteed elements");
9. The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy be-

ing illustrated and shown in close proximity to the corresponding value available upon surrender;

10. The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable;

11. Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form;

12. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

- a. The benefits and values are not guaranteed;
  - b. The assumptions on which they are based are subject to change by the insurer; and
  - c. Actual results may be more or less favorable;
- 13.a. If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration shall clearly disclose that:
- (i) A charge continues to be required; and
  - (ii) Depending on actual results, the premium payer may need to continue or resume premium outlays.

b. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up; and

14. If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(b) Narrative summary. A basic illustration shall include the following:

1. A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

2. A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

3. A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

4. Identification and a brief description of column headings and key terms used in the illustration; and

5. A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(c) Numeric summary.

1. Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium.

2. This summary shall be shown for at least policy years five (5), ten (10), and twenty (20), and at age seventy (70), if applicable, on the three (3) bases shown below. For multiple life policies the summary shall show policy years five (5), ten (10), twenty (20) and thirty (30).

- a. Policy guarantees;
- b. Insurer's illustrated scale;
- c. Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:
  - (i) Dividends at fifty (50) percent of the dividends contained in the illustrated scale used;
  - (ii) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and
  - (iii) All nonguaranteed charges, including term insurance

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charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

3. If coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three (3) bases.

(d) Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner for an illustration provided at time of delivery, as required in this administrative regulation.

1. A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

2. A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(e) Tabular detail.

1. A basic illustration shall include the following for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity, or final expiration; and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:

a. The premium outlay and mode the applicant plans to pay and the contract premium, as applicable.

b. The corresponding guaranteed death benefit, as provided in the policy; and

c. The corresponding guaranteed value upon surrender, as provided in the policy.

2. For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

3. Nonguaranteed elements may be shown if described in the contract.

a. If an illustration is for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends.

b. If any nonguaranteed elements are shown they shall be shown at the same durations as the corresponding guaranteed elements, if any.

c. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

(3)(a) A supplemental illustration may be provided if:

1. It is appended to, accompanied by or preceded by, a basic illustration that complies with this administrative regulation;

2. The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

3. It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

4. For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

Section 30. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Long-term Care Insurance Personal Worksheet, HIPMC-LTC-1 (09/01);

(b) Long-term Care Insurance Potential Rate Increase Disclosure Form, HIPMC-LTC-2 (09/01);

(c) Rescission Reporting Form for Long-term Care Policies,

HIPMC-LTC-3 (09/01);

(d) Claims Denial Reporting Form for Long-term Care Insurance, HIPMC-LTC-4 (09/01);

(e) Things You Should Know Before You Buy Long-term Care Insurance, HIPMC-LTC-5 (09/01); and

(f) Long-term Care Insurance Suitability Letter, HIPMC-LTC-6 (09/01).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Office's internet web site at <http://doi.ppr.ky.gov.kentucky/>.

SHARON CLARK, Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 12, 2008 at 2 p.m.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street; P.O. Box 517; Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

### **PUBLIC PROTECTION CABINET Department of Financial Institutions Division of Securities (As Amended at ARRS, December 9, 2008)**

**808 KAR 10:042 Use of senior certifications and designations.**

RELATES TO: KRS 292.320(1)(c), 292.320(2)(b), 292.330(13)(a)7 292.470, 292.530(1)(a)

STATUTORY AUTHORITY: KRS 292.330(12)(f), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the executive director to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(12)(f) authorizes the commissioner to promulgate administrative regulations for the conduct of business by broker-dealers and investment advisors. [292.320 prohibits fraud or deception in connection with the offer, sale, or purchase of a security or the provision of investment advice.] KRS 292.330(13)(a)7 authorizes the commissioner to take legal action against an applicant or registrant if the person has engaged in dishonest or unethical practices in the securities business. This administrative regulation sets forth practices that are fraudulent or deceptive within the meaning of KRS 292.320 or dishonest and unethical within the meaning of KRS 292.330(13)(a)7.

Section 1. **Definition. "Financial Services Regulatory Agency" means an agency that regulates broker-dealers, investment advisors, or investment companies as defined under the Investment Company Act of 1940, 15 U.S.C. 80a.**

**Section 2.** Misleading Use of Certification of Designation is Prohibited. As set forth in Section 2 of this administrative regulation, the use of a senior specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees shall be a fraudulent, deceptive, dishonest, or unethical practice in the securities business within the meaning of KRS 292.320(1)(c), 292.320(2)(b), or 292.330(13)(a)7, if used by any person in connection with:

(1) The offer, sale, or purchase of securities; or

(2) The provision of advice:

(a) As to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings; or

(b) By issuing or promulgating analyses or reports relating to securities.

Section 3.[2.] Prohibited Uses of a Certification or Designation. The prohibited use of a senior specific certification or professional

designation in the securities business shall include the following:

- (1) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
- (2) Use of a nonexistent or self-conferred certification or professional designation;
- (3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
- (4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:
  - (a) Is primarily engaged in the business of instruction in sales or marketing;
  - (b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
  - (c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
  - (d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

Section ~~4.~~3. Rebuttable Presumption for Certifications or Designations Issued by Accredited Organizations. Solely for purposes of Section ~~3(4), there shall be~~2(4), there is of this administrative regulation, there is a rebuttable presumption that a designating or certifying organization is not disqualified if the organization has been accredited by:

- (1) The American National Standards Institute;
- (2) The National Commission for Certifying Agencies; or
- (3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued from that organization does not primarily apply to sales or marketing.

Section ~~5.~~4. Certifications and Designations Indicating Special Training. In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

- (1) use of one or more words such as "senior", "retirement", "elder", or like words, combined with one or more words such as "certified", "registered", "chartered", "adviser", "specialist", "consultant", "planner", or like words, in the name of the certification or professional designation; and
- (2) the manner in which those words are combined.

Section ~~6.~~5. Rebuttable Presumption for Certain Job Titles. ~~[(1) "Financial Services Regulatory Agency" means an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.~~

~~(2)~~ For purposes of this administrative regulation, there ~~shall be~~is a rebuttable presumption that a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, if that job title:

- ~~(1)(a)~~ Indicates seniority or standing within the organization; or
- ~~(2)(b)~~ Specifies an individual's area of specialization within the organization.

Section ~~7. This administrative regulation shall not~~6. Nothing in this administrative regulation shall limit the commissioner's authority to enforce existing provisions of law.

ROBERT VANCE, Secretary  
CHARLES VICE, Commissioner

APPROVED BY AGENCY: September 10, 2008

FILED WITH LRC: October 9, 2008 at 2 p.m.

Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 234, fax (502) 573-2183.

**PUBLIC PROTECTION CABINET**  
**Department of Financial Institutions**  
**Division of Securities**

(As Amended at ARRS, December 9, 2008)

**808 KAR 10:440. Examples of Dishonest or unethical practice for broker-dealers and agents.**

RELATES TO: KRS 292.330(13)(a)7

STATUTORY AUTHORITY: KRS 292.330(12)(e), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. ~~KRS 292.330(13)(a)7 authorizes the commissioner of the Department of Financial Institutions to take disciplinary action against the registration of a broker-dealer or agent if that person has engaged in a dishonest or unethical practice.] KRS 292.330(12)(e) and (f) authorize the commissioner to promulgate administrative regulations prohibiting~~ authorizes the commissioner to prohibit unreasonable charges, profits, commissions, or other compensation for broker-dealers and agents and prescribing standards for the conduct of business by broker-dealers and agents which the commissioner finds appropriate in the public interest and for the protection of investors. This administrative regulation provides examples of dishonest and unethical practices by broker-dealers and agents and states~~restates~~ the consequences of engaging in ~~such~~ unacceptable conduct or practices.

Section 1. Broker-dealers shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers and the conduct of their business. Acts and practices such as the following shall be~~are~~ considered contrary to ~~these~~such standards. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.330(13)(a):

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment of free credit balances reflecting completed transactions of any of its customers;

(2) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to timely respond to a formal written demand or complaint by a customer;

(3) Attempting to enforce a condition, stipulation, or provision against a customer in Kentucky if the result would:

(a) Leave the customer without the choice of a forum for dispute resolution in the state of Kentucky; or

(b) Limit the timeliness of an action to a period less than that established in KRS 292.480;

(4) Failing to segregate a customer's securities held in safekeeping;

(5) Hypothecating~~Except as permitted by the rules of the Securities and Exchange Commission, hypothecating~~ a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;

(6) Charging unreasonable and inequitable fees for services performed, such as:

(a) Collection of monies due for principal;

(b) Dividends or transfer of securities;

(c) Appraisals;

(d) Safekeeping; or

(e) Custody of securities and other services related to its securities business;

(7) Offering to buy from or sell to any person any security at a stated price unless the~~such~~ broker-dealer is prepared to purchase or sell, as the case may be, at the~~such~~ price and under the~~such~~ conditions as are stated when the offer is made~~at the time of such offer~~;

(8) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless

the[such] broker-dealer knows or has reasonable grounds to believe that a market for the[such] a security exists other than that made, created or controlled by the[such] broker-dealer, or by any the[such] person for whom the broker-dealer~~he or she~~ is acting or with whom the broker-dealer~~he or she~~ is associated in the[such] distribution, or any person controlled by, controlling, or under common control with the[such] broker-dealer;

(9) Failing to disclose in writing that the broker-dealer is controlled by, controls, is affiliated with, or is under common control with the issuer of any security, the existence of this[such] control before entering into any binding contract with or for a customer for the purchase or sale of the[such] security;

(10) Failing to make a bona fide public offering of all the securities allotted to the broker-dealer for distribution, whether acquired directly as an underwriter or a selling group member or indirectly from an entity participating in the distribution as an underwriter or selling group member;

(11) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(12) Switching, churning, overtrading, or reloading of a security in a customer's account for the purpose of accumulating or increasing a commission;

(13) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the[such] transaction or recommendation is suitable for the customer based upon reasonably inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(14) Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a formal prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(15) Participating in the solicitation or offer for sale of a security without the use of an offering documents or prospectus, if required~~[(if required)]~~ or making a statement contrary to or inconsistent with disclosure contained in the offering document or prospectus;

(16) Making a false, misleading, deceptive, or exaggerated representation or prediction in the solicitation or sale of a security, including:

(a) That the security will be resold or repurchased;

(b) That the security will be listed or traded on an exchange or established market;

(c) That the security will result in an assured, immediate or material increase in value, future market price or return on an investment;

(d) That there is a guarantee against risk of loss; or

(e) Any statement with respect to an issuer's financial condition, anticipated earnings, potential growth or success not supportable by information in the offering document or prospectus;

(17) Engaging or aiding in boiler room operations such as use of high pressure tactics to promote a speculative offering or promotion of a security in an intensive campaign in which the prospective purchaser is encouraged to make a hasty decision to buy a security irrespective of the purchaser's investment needs, objectives, or understanding of the security being offered;

(18) Executing a transaction on behalf of a customer without authorization to do so;

(19) Exercising any discretionary power effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the executing of orders;

(20) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement;

(21) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(22) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design or contrivance, which may include any of the following:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any the[such] security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; ~~except, this subsection shall not~~~~provided, however, nothing in this subsection shall~~ prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the[such] security, for the purpose of inducing the purchase or sale of the[such] security by others;

(23) Guaranteeing a customer against loss in any securities account of the[such] customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer;

(24) Publishing or circulating, or causing the publication or circulation of, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the[such] broker-dealer reasonably believes that the[such] transaction was a bona fide purchase or sale of the[such] security; or which purports to quote the bid price or asked price for any security, unless the[such] broker-dealer reasonably believes that the[such] quotation represents a bona fide bid or offer;

(25) Using any advertising or conducting any sales practice in a deceptive or misleading manner~~[such a way as to be deceptive or misleading];~~

(26) Entering into an agreement for a concession, discount, commission, or allowance as consideration for a service in connection with the distribution or sale of a security in Kentucky with a broker-dealer, agent, investment adviser, or investment adviser representative who is not either:

(a) Registered in Kentucky; or

(b) Exempted from the registration requirements for conducting a securities business in Kentucky~~;~~;

(27) Lying to or otherwise misleading representatives of the Department of Financial Institutions conducting an authorized examination or investigation;

(28) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(29) Failing to respond within the specified time period to a written request from an authorized representative of the Department of Financial Institutions for information:

(a) An explanation of practices ~~or~~ ~~procedures~~;

(b) A response to a complaint filed with the Department of Financial Institutions; or

(c) A response to a written statement of findings from an examination; and

(30) Committing any act involving a customer, a customer's account, or any business records which would constitute a criminal offense.

Section 2. Broker-dealer agents shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices are considered contrary to these[such] standards. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.330(13)(a):

(1) Sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents;

(2) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(3) Effecting securities transactions not recorded on the regular books and records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the[such] broker-dealer prior to execution of the transaction;

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- (4) Engaging in the practice of lending to or borrowing from a customer either money or securities;
- (5) Acting as custodian of a customer's money, securities, or an executed stock power; and
- (6) Engaging in conduct specified in Section 1(11) to (30) of this administrative regulation.

Section 3. Issuer agents shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices are considered contrary to these standards. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense, pursuant to KRS 292.330(13)(a):

- (1) Engaging in conduct specified in Section 1(2), (13), (15) to (18), or (25) to (30) of this administrative regulation.

- (2) Engaging in conduct specified in Section 2(3) or (4) of this administrative regulation.

Section 4. The commissioner may determine that an activity not included in the examples identified in Sections 1 through 3 of this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

CHARLES VICE, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2008

FILED WITH LRC: September 15, 2008 at noon

CONTACT PERSON: William Owsley, Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 236, fax (502) 573-2183.

**PUBLIC PROTECTION CABINET**  
**Department of Financial Institutions**  
**Division of Securities**  
**(As Amended at ARRS, December 9, 2008)**

**808 KAR 10:450. Examples of Dishonest or unethical practice for investment advisers and investment adviser representatives.**

RELATES TO: KRS 292.330(13)(a)7

STATUTORY AUTHORITY: KRS 292.330(12)(e), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(13)(a)7 authorizes the commissioner of the Department of Financial Institutions to take disciplinary action against the registration of an investment adviser or investment adviser representative if that person has engaged in a dishonest or unethical practice. KRS 292.330(12)(e) and (f) authorize the commissioner to promulgate administrative regulations prohibiting unreasonable charges or other compensation of investment advisers and prescribing standards for the conduct of business by investment advisers and investment adviser representatives which the commissioner finds appropriate in the public interest and for the protection of investors. This administrative regulation provides examples of dishonest and unethical practices by investment advisers and investment adviser representatives and clarifies the consequences of engaging in such unacceptable conduct or practices.

Section 1. Definitions. (1) "Investment adviser solicitor" means a person or person or entity that, directly or indirectly, solicits a prospective client for, or refers a prospective client to, an investment adviser.

(2) "Advertisement" means any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any other medium, that offers any one of the following:

- (a) Any analysis, report, or publication concerning securities;
- (b) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
- (c) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
- (d) Any other advisory service with regard to securities.

(2) "Investment adviser solicitor" means a person or entity that, directly or indirectly, solicits a prospective client for, or refers a prospective client to, and investment adviser.

Section 2. A person who is an investment adviser or an investment adviser representative shall be a fiduciary and shall have a duty to act primarily for the benefit of its clients. An investment adviser or investment adviser representative shall not engage, either directly or indirectly, in unethical or dishonest practices. The following acts and practices shall be such as the following considered either a breach of fiduciary duty or a dishonest and unethical practice. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense:

- (1) Recommending to a client to whom investment advisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

- (2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

- (3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account in light of the fact that an investment adviser or investment adviser representative in these situations can directly benefit from the number of securities transactions effected in a client's account;

- (4) Placing an order to purchase or sell a security for the account of a client without authority to do so;

- (5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

- (6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

- (7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

- (8)(a) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser; or

- (b) Misrepresenting the nature of the advisory services being offered or fees to be charged for the service; or

- (c) Omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they were made, not misleading;

- (9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact;

- (10) Charging a client an unreasonable advisory fee in light of the fee charged by other investment advisers providing similar services;

- (11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser, or any of its employees including:

- (a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) The amount of any commissions to be received for executing transactions pursuant to advice given;

(12) Failing to disclose to clients in writing before any advice is rendered any material fact with respect to the financial and disciplinary information required to be disclosed by 17 C.F.R. 275.206(4)-4 (SEC Rule 206(4)4);

(13) Guaranteeing a client that a specific result will be achieved with advice which will be rendered;

(14) Using any advertisement that does any of the following:

(a) Refers to any testimonial of any kind concerning any advice, analysis, report, or other service rendered by the adviser or representative;

(b) Refers to past specific recommendations of the adviser or representative that were or would have been profitable, except that an adviser or representative may furnish or offer to furnish a list of all recommendations made by the[said] adviser or representative within the immediately preceding period of not less than one year if the list also includes the following:

1. The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security; and

2. A legend on the first page in prominent print or type that states that recommendations made in the future may not be as profitable as the securities on the list;

(c) Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions without prominently disclosing in the[such] advertisement the limitations[thereof] and the difficulties with respect to its use;

(d) Represents that any report, analysis, or other service will be furnished for free or without charge, unless the[such] report, analysis or other service actually is or will be furnished free and without any direct or indirect condition or obligation;

(e) Represents that the Department of Financial Institutions has approved any advertisement; or

(f) Contains any untrue statement or omission of a material fact, or that is otherwise false or misleading;[.]

(15) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to in writing by the client;

(16) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, if[where] the investment adviser has custody or possession of the[such] securities or funds when the adviser's action is subject to and does not comply with the provisions of KAR 10:020 relating to the[such] custody;

(17) Entering into, extending, or renewing an advisory contract unless the contract is in writing and discloses the following:

(a) The nature of the advisory services to be provided;[.]

(b) The time period that the contract remains in effect;

(c) The advisory fee and the formula for computing the fee;

(d) The amount of the prepaid fee to be returned in the event of contract termination or nonperformance;

(e) Whether the contract grants discretionary power to the adviser and, if so, the terms of the discretionary power;

(f) Whether the contract grants custody of client funds to the adviser and, if so, the terms of the custody; and

(g) That the adviser shall not assign the contract without the prior written consent of the client;

(18) Including in an advisory contract any condition, stipulation, or provision binding any client to waive compliance with any provision of the Kentucky Securities Act, **KRS Chapter 292, 808 Chapter 10, or of the Investment Advisors Act of 1940, 15 U.S.C. 80b**[- (KRS Chapter 292) or any regulations promulgated there under or of the Investment Advisors Act of 1940];

(19) Paying compensation, directly or indirectly, to an investment adviser solicitor unless the investment adviser makes the payment in accordance with the requirements of 17 C.F.R. 275.206(4)-3) (SEC Rule 206(4)-3);

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisors Act of 1940, whether or not the investment adviser is registered or required to be registered under Section 203 of the[said] Act;

(21) Failing to provide all material information with respect to any dealings with or recommendations to any advisory client in violation of KRS 292.320;

(22) Committing any act involving a client, the client's assets, or any business records which would constitute a criminal offense;

(23) Lying to or otherwise misleading a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(24) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation; and

(25) Failing to respond in a timely manner to a written request from an authorized representative of the Department of Financial Institutions for information:

(a) An explanation of practices or procedures;

(b) A response to a complaint filed with the department; or

(c) A response to a written statement of findings from an examination.

Section 3. The provisions of this administrative regulation shall apply to federally covered advisers operating in Kentucky to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Market Improvement Act of 1996, **15 U.S.C. 78**[(Pub. L. No. 104-290)] and the Investment Advisors Act of 1940, **15 U.S.C. 80b**[(15 U.S.C. Section 80b-1 et seq.)];

Section 4. The commissioner may determine that an activity not included in the examples identified in Section 2 of this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

CHARLES VICE, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2008

FILED WITH LRC: September 15, 2008 at noon

CONTACT PERSON: William Owsley, Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 236, fax (502) 573-2183.

**PUBLIC PROTECTION CABINET  
Department of Financial Institutions  
Division of Securities  
(As Amended at ARRS, December 9, 2008)**

**808 KAR 10:460. Request for Approval of Change in Control.**

RELATES TO: KRS [292.330(12)(f);] 292.330(13)(a)

STATUTORY AUTHORITY: KRS 292.330(12)(f), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 292.500(3) authorizes the executive director to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292.** KRS 292.330(12)(f) authorizes the commissioner to **promulgate administrative regulations** [pre-~~scribe rules~~] for the conduct of business by broker-dealers and investment advisers. KRS 292.330(13)(a) authorizes the commissioner to deny, suspend, or revoke the registration of a broker-dealer or investment adviser if the registrant or any person, directly or indirectly controlling the registrant has engaged in certain activities. This administrative regulation requires registrants to submit a request for a change in the control of the registrant so that the commissioner may review the background of the acquiring person.

Section 1. Definitions. (1) "Control" means the power, directly or indirectly, to direct the management or policies of an entity,

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whether through ownership of securities, by contract, or otherwise.

(2) "Reportable event" means an event that is required to be reported in Items 11A-11H of the Form BD or Item 11 of the Form ADV.

Section 2. Presumption of Control. A person shall be~~is~~ presumed to control an entity if the person:

(1) Is an officer, director, general partner, or managing member of the entity or is a person occupying a similar status or performing similar functions;

(2) Has the right, directly or indirectly, to vote twenty-five (25) percent or more of the voting securities of the entity; or

(3) Is entitled to receive twenty-five (25) percent or more of its profits.

Section 3. Requirement for Approval of Change in Control. A registered broker-dealer or investment adviser shall submit a request for approval of a change in the control of the broker-dealer or investment adviser if control is to be acquired by any person who:

(1) Is not currently registered in Kentucky as a broker-dealer or investment adviser; or

(2) Has had a reportable event in the previous ten (10) years.

Section 4. Request for Approval of Change in Control. (1) A registered broker-dealer or investment adviser required to submit a request for approval of a change in control shall file a letter of request along with an amended Form BD or Form ADV indicating the proposed change in the control of the broker-dealer or investment adviser.

(2) A request for approval shall be submitted at least thirty (30) days prior to the proposed change in control.

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

(a) "Form BD", ~~[issued]~~ May, 2002; and.

(b) "Form ADV", ~~[issued]~~ April 7, 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

ROBERT VANCE, Secretary

CHARLES VICE, Commissioner

APPROVED BY AGENCY: September 10, 2008

FILED WITH LRC: October 9, 2008 at 2 p.m.

CONTACT PERSON: Colleen Keefe, Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 234, fax (502) 573-2183.

### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, December 9, 2008)**

#### **810 KAR 1:012. Horses.**

RELATES TO: KRS 230.215, EO 2008-668 ~~[230.240-230.360]~~

STATUTORY AUTHORITY: KRS 230.215, 230.260(3), EO 2008-668 ~~[Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements[guidelines] for the participation of horses in horse race meetings.[To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for horses entered to be raced.]

Section 1. Registration Required. **(1) Except as provided by subsection (2) of this section,** a horse shall not~~[No horse shall]~~ be entered or raced in this state unless:

(a) Duly registered and named in the registry office of the Jockey Club in New York; and

~~(b)[and unless]~~ The registration certificate or racing permit issued by the Jockey Club for the horse is on file with the racing secretary.

~~(2)[except, however][However,]~~ The stewards may for good cause~~[in their discretion,]~~ waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.

(3) The Jockey Club registration certificate of each horse shall be filed with the horse identifier within forty-eight (48) hours after the horse's arrival on the association grounds.

Section 2. Ringers Prohibited. (1) A horse shall not~~[No horse shall]~~ be entered or raced in this state designated by a name other than the name under which the horse is currently registered with the Jockey Club in New York. If a horse's name is changed by the Jockey Club, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not~~[No person shall at any time]~~ cause or permit the correct identity of a horse to be concealed or altered. A person shall not~~[No person shall]~~ refuse to reveal the correct identity of a horse he owns, or which is in his care, to a racing official or member of the regular news media.

(3) A horse shall not~~[No horse shall]~~ race in this state without a legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau.

(4) A horse shall not~~[No horse shall]~~ be entered or raced in this state if previously involved in a "ringer" case to the extent that:

(a) A person having control of the~~[such]~~ horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with the Jockey Club; or

(b) The person having control of the~~[such]~~ horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 3. Denerving. (1) A~~[Any]~~ horse on which a neurectomy has been performed shall have that~~[such]~~ fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of the denerved horse to ensure~~[insure]~~ that [such] fact is designated on the registration certificate or racing permit.

(2) A~~[No]~~ horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed bilaterally, shall not be entered or raced in this state.

(3) A horse whose volar or plantar nerve has been removed unilaterally or which has had a posterior digital neurectomy (known as low nerved), may be permitted to race if the~~[provided such]~~ deserving has been reported by the trainer to the stewards, and the horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a~~[no]~~ protest~~[thereon]~~ shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a~~[no]~~ protest~~[thereon]~~ shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. A person shall not~~[No person shall]~~ report a horse as having a neurectomy if in fact the horse has not had a neurectomy.

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Section 4. Bleeders. (1) A horse~~[Any horse]~~ that bleeds either during or after a race or workout and is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian.

(2)(a) A horse that bleeds~~[Horses that bleed]~~ while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the authority veterinarian after consultation with the practicing veterinarian.

(b) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee.

(c) The opinion of the third veterinarian shall be delivered to the secretary of the commission or his designee who shall make a final decision on the issue.

Section 5. Health Certificate Required. A horse shall not~~[No horse shall]~~ be stabled on association grounds unless within ten (10) days prior to arrival on association grounds, the horse has been examined by an accredited practicing veterinarian who shall certify:

(1) The identity of the horse;

(2) Temperature when examined;

(3) [temperature at time of examination, and] That to the best of his or her knowledge and belief, the horse is free from any infectious or contagious disease or exposure thereto and observable ectoparasites; and

(4) [and as to] Any~~[such]~~ other matters as may be required from time to time by the Kentucky State Veterinarian. Notice of this requirement shall accompany stall applications and be included in the condition book.

Section 6. Workouts. A horse shall not~~[No horse shall]~~ be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Age Restrictions. A maiden~~[No maiden]~~ six (6) years of age or older which has made five (5) life time starts on the flat shall not be entered or start.

Section 8. Fillies and Mares Bred. (1) Any filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A~~[No]~~ filly or mare that has been covered by a stallion shall be entered in a claiming race, unless a written release from the stallion owner is attached to the filly or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 9. Serviceable for Racing. A~~[No]~~ horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time cause a horse on association grounds to be examined by a qualified person; [-]

(2) Is posted on a veterinarian's list, [or] stewards' list, or starter's list, or is suspended, in any racing jurisdiction; [-]

(3) Has been administered any drug in violation of 810 KAR 1:018; [-]

(4) Is blind or has seriously impaired vision; [-]

(5) Is not correctly identified to the satisfaction of the stewards; or [-]

(6) Is owned wholly or in part by, or is trained by, an ineligible person.

Section 10. Equipment. (1) Whips and blinkers shall be used consistently on a horse.

(2) Permission to change use of any equipment used on a horse in its last previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle may weigh no more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles shall not be used.

(7)~~[be prohibited.]~~ A horse shall not~~[No horse shall]~~ race in ordinary training shoes.

(8) Bar shoes may be used for racing only with permission of the stewards.

(9) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for an ordinary whip, which may be used to alter the speed of a horse shall not be used on a horse in a race or workout.~~[(2) Use on a horse either in a race or workout of any goading device, chain, spurs, electrical or mechanical device, or appliance other than the ordinary whip which may be used to alter the speed of the horse, shall be prohibited.]~~

(10)(a)~~[(3)]~~ A whip shall not~~[No whip shall]~~ be used that weighs more than one (1) pound or is longer than thirty (30) inches with one (1) popper.

(b) A stinger or projection~~[No stingers or projections]~~ extending through the hole of a popper or any metal part on a whip shall not be used.

(c) An ordinary whip shall not be used indiscriminately or brutally, as determined by the stewards.~~[permitted. Indiscriminate or brutal use on a horse of an ordinary whip, as determined by the stewards in their sole discretion, shall be prohibited.]~~

(11)~~[(4)]~~ (a) The following shall not be used~~[be prohibited]~~ on the front shoes of thoroughbred horses while racing or training on all racing surfaces:

1. Horse shoes (racing plates) which have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of thoroughbred horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used~~[shall be permitted]~~ on the front shoes of thoroughbred horses while racing or training.

Section 11. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary promptly. The racing secretary shall note any alteration in the sex of a horse on the horse's registration certificate.

Section 12. Postmortem Examination. Each horse which suffers a breakdown on the race track, in training, or in competition, and is destroyed, and each horse which expires while stabled on a race track under jurisdiction of the Racing Commission, shall undergo a postmortem examination at the University of Kentucky at the discretion of the commission steward and the commission veterinarian.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 14, 2008

FILED WITH LRC: July 15, 2008 at noon

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

**PUBLIC PROTECTION CABINET**  
**Kentucky Horse Racing Commission**  
**Division of Enforcement**  
**(As Amended at ARRS, December 9, 2008)**

**810 KAR 1:018. Medication; testing procedures; prohibited practices.**

RELATES TO: KRS 230.210(9), 230.215, 230.240(2), 230.260(1), (2), (3), (6), (7), 230.265(2), 230.290(2), 230.320(1), EO 2008-668



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STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260 (3), 230.320(1), **EO 2008-668**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Authority to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the Authority to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. **EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission.** This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) **"AAS" or "anabolic steroid" means an anabolic androgenic steroid.**

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3)(2) "Commission [Authority] laboratory" means a laboratory chosen by the commission [Authority] to test **biologic samples** [saliva, urine, blood, or other samples or specimens] from horses taken under the supervision of the commission [Authority] veterinarian.

(4)(3) "Location under the jurisdiction of the commission [Authority]" or "Association grounds" means a track as defined in KRS 230.210(9).

(5)(4) "Permitted NSAIDs" means the following Permitted Non-steroidal Anti-inflammatory Drugs: Phenylbutazone, Flunixin, and Ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6)(5) "Positive finding" means the commission [Authority] laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample.

(a) For the drugs, medications, or substances listed in Section 2(3), 6, or 8 of this administrative regulation, it shall be necessary to have a finding in excess of the established concentration level as provided in this administrative regulation for the finding to be considered a positive finding.

(b) Positive findings also include:

1.(a) Substances present in the horse in excess of concentrations at which ~~the~~<sup>such</sup> substances could occur naturally; and

2.(b) Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7)(6) "Split sample" means the split sample portion of the **biologic sample** [saliva, urine, blood, or other sample or specimen] taken under the supervision of the commission [Authority] veterinarian.

(8)(7) "Split sample laboratory" means the laboratory approved by the commission [Authority] to test the split sample portion of the **biologic sample** [saliva, urine, blood, or other samples or specimens] from horses taken under the supervision of the commission [Authority] veterinarian.

(9)(8) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining sample specimens for prerace and postrace testing.

(10) **"Therapeutic AAS" means boldenone, nandrolone, or testosterone.**

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications **shall not be present** in excess of established threshold concentrations set forth in this administrative regulation ~~[shall be prohibited]~~. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for permitted NSAIDs are set forth in Section 8 of this administrative regulation.

(4) A substance **shall not be** present in a horse in excess of a concentration at which the substance could occur naturally ~~[shall be prohibited]~~ if it affects the performance of the horse. It shall be the responsibility of the commission [Authority] to prove that the substance was in excess of normal concentration levels and that it affected the performance of the horse.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A **biologic sample** [saliva, urine, blood, or other sample or specimen] from the horse was taken under the supervision of the commission [Authority] veterinarian promptly after a horse ran in a race; and

(b) The commission [Authority] laboratory presents to the commission [Authority] a report of a positive finding.

(6) The commission [Authority] shall utilize the "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08, ~~(11-05)~~ for classification of drugs and medications violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 1:028.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [Authority] shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission [Authority].

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide and the permitted adjunct bleeder medications as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [Authority] shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission [Authority].

(4) A veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [Authority] shall use only **single-use** ~~one (1)-time~~ disposable needles, and shall dispose of them in a container provided by the commission [Authority] veterinarian.

(5) If a person regulated by the commission [Authority] has a medical condition which makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission [Authority], the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringes at a location under the jurisdiction of the commission [Authority] but may also establish necessary restrictions and limitations.

(6) An commission [Authority] employee may accompany a veterinarian at a location under the jurisdiction of the commission [Authority] and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products

commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

- (1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;
- (2) The treatment is not injected; and
- (3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [Authority].

Section 5. Antiulcer Medications. The following antiulcer medications ~~may~~shall be permitted to be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to the race in which the horse is entered:

- (1) Cimetidine (Tagamet®): 8-20 mg/kg;
- (2) Omeprazole (Gastrogard®): two and two-tenths (2.2) grams; and
- (3) Ranitidine (Zantac®): eight (8) mg/kg.

Section 6. Furosemide and Adjunct Bleeder Medication; Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(2) ~~The use of~~ Furosemide may be used ~~shall be permitted~~ under the following circumstances:

- (a) Furosemide shall be administered at a location under the jurisdiction of the commission [Authority], by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.
- (b) The syringe employed in the injection shall be provided immediately to the commission [Authority] veterinarian, steward, or commission [Authority] employee, if requested, to determine if there has been a violation of this administrative regulation.
- (c) The furosemide dosage administered shall not exceed 500 mg, nor be less than 150 mg.
- (d) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse eligible to receive furosemide pursuant to Section 7 of this administrative regulation that does not show a detectable concentration of the drug in the post-race urine, plasma, or serum shall be in violation of this administrative regulation.

(3) Up to two (2) of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

- (a) Aminocaproic acid;
- (b) Carbazochrome;
- (c) Conjugated estrogens; and
- (d) Tranexamic acid.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or licensed veterinarian determines that it would be in the horse's best interests to race with furosemide.

(b) Horses eligible for furosemide and entered to start may be monitored by an commission[Authority]-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) A horse eligible for furosemide shall receive furosemide unless the licensed trainer or licensed veterinarian submits a written request to the commission [Authority] veterinarian to no longer administer furosemide to the horse. The request shall be on the form "Certificate of Termination of Lasix KHRA 100-5 (8-06)", incorporated by reference in 811 KAR 1:090, [forms provided by the commission] [Authority] [veterinarian] and shall be submitted to the commission[Authority]-approved representative not later than time of entry.

(3)(a) After a horse has been determined by the commission [Authority] veterinarian to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide for a period of sixty (60) calendar days unless it is determined by the trainer or veterinarian, in consultation with the commission [Au-

thority] veterinarian, that it is detrimental to the welfare of the horse to not be on furosemide.

(b) If a horse is determined by the commission [Authority] veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs).

(1) ~~The use of~~ One (1) of the following NSAIDs may be used ~~shall be permitted~~ by a single intravenous injection not less than twenty-four (24) hours before post time for the race in which the horse is entered if ~~provided~~ the concentration in the horse's sample or specimen does not exceed the following levels when tested post race:

- (a) Phenylbutazone - not to exceed five (5) micrograms per milliliter of plasma or serum;
- (b) Flunixin - not to exceed twenty (20) nanograms per milliliter of plasma or serum; and
- (c) Ketoprofen - not to exceed ten (10) nanograms per milliliter of plasma or serum.

(2) ~~Administration of~~ One (1) of the permitted NSAIDs or any other NSAID shall not be administered within twenty-four (24) hours before post time for the race in which the horse is entered ~~shall be prohibited~~.

(3)(a) The use of any NSAID other than permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours before post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of one (1) microgram per milliliter of plasma or serum shall not constitute a violation of this section.

(4) A horse that has been administered a NSAID shall be subject to a biologic sample [saliva, urine, blood, or other sample or specimen] being taken under the supervision of the Authority veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 9. Anabolic steroids. (1) ~~An~~ ~~The presence of~~ exogenous anabolic androgenic steroid shall not be present [steroids ("AAS") is banned] in a horse that is racing. The detection of an[any] exogenous anabolic steroid or metabolite derivative [thereof] in a post race biologic sample or a prerace biologic sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a postrace sample of an[any] endogenous anabolic steroid or metabolite derivative[thereof] where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has[its metabolites, markers and/or any relevant ratio(s)] as have] been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level[levels] shall constitute a violation of this administrative regulation. [For purposes of this rule,] The following shall be[are] deemed to be [the] naturally occurring physiological levels:

- (a) Boldenone (free and conjugated):
    1. In male horses other than geldings - 15 ng/ml in urine; and
    2. In geldings and female horses, boldenone shall not be permitted]. No boldenone shall be permitted in geldings or female horses];
  - (b) Nandrolone (free and conjugated):
    1. In geldings - 1 ng/ml in urine;
    2. In fillies and mares - 1 ng/ml in urine; and
    3. In male horses other than geldings - 45 ng/ml of metabolite, 5 $\Sigma$ -estrane-3 $\beta$ , 17  $\Sigma$ -diol in urine or a ratio in urine of 5 $\Sigma$ -estrane-3 $\beta$ , 17  $\Sigma$ -diol to 5 $\Sigma$ -estrane-3 $\beta$ , 17  $\Sigma$ -diol of >1:1; and
  - (c) Testosterone (free and conjugated):
    1. In geldings - 20 ng/ml in urine; and
    2. In fillies and mares - 55 ng/ml in urine.
- [3. Male horses: in amounts in excess of amounts existing naturally in the untreated horse at normal physiological concentrations.]

**(3) In accordance with this subsection, a horse may receive one (1) Therapeutic AAS.** ~~[A horse may receive one (1) of the following medications: boldenone, nandrolone, or testosterone ("Therapeutic AAS") if each of the following conditions are met:]~~

~~(a) The Therapeutic AAS shall~~**[must]** be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. ~~An~~**[Any]** owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration;

~~(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:~~

~~1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;~~

~~2. A relevant biologic~~**[biological]** sample is taken from the horse;

~~3. The sample is tested for anabolic steroids by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and~~

~~4. The commission~~**[KHC]** has received a report from the laboratory of a negative finding regarding the sample;

~~(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race sample shall~~**[will]** be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample;

~~(d) The horse shall~~**[may]** not be entered to race until at least 60 days after the administration of the Therapeutic AAS to the horse.~~;~~

~~(e) Procedures for administration of Therapeutic AAS:~~

~~1. [Only a licensed veterinarian may administer] A Therapeutic AAS shall be administered by a licensed veterinarian;~~

~~2. Other treatment methods shall be investigated prior to considering the use of Therapeutic AAS;~~

~~3. Medical records for the horse shall document:~~

~~a. Consideration of alternative treatment methods; and~~

~~b. The necessity for administering the Therapeutic AAS.~~~~[consideration of the use of Therapeutic AAS and the medical records shall include documentation of the consideration of the alternative methods. The medical records for the horse shall include information documenting the necessity for the administration of the Therapeutic AAS;]~~

~~4. [3.] The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:~~

~~a. The Therapeutic AAS administered, the amount in milligrams, route, and site of administration;~~

~~b. The date and time of administration;~~

~~c. The name, age, sex, color, and registration certificate number of the horse to which the Therapeutic AAS is administered; and~~

~~d. The diagnosis and justification for administration of the Therapeutic AAS to the horse.~~

~~5. [4.] The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication;~~

~~6. [5.] The Therapeutic AAS Administration Form shall be delivered electronically to the Equine Medical Director of the Kentucky Horse Racing Commission within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically, the practitioner shall file the form with the Medical Director in person or through the mail. [It is the responsibility of] The submitting veterinarian shall~~**[to]** confirm receipt by the Equine Medical Director.

~~(4) If a horse is shipped into Kentucky from outside the state, prior to being eligible to race in Kentucky:~~

~~(a) The protocol in subsection (3) of this section shall be complied with in its entirety; or~~

~~(b)1. The trainer shall certify that he or she has had control of the horse for the sixty (60) days previous to racing and the horse has not been administered an anabolic steroid~~**[anabolic steroids]; or**

~~2. The trainer shall certify that he or she has not had control of the horse for the sixty (60) days previous to racing but shall~~

acknowledge that he or she is responsible and accountable ~~if~~**[should]** a post-race test ~~identifies~~**[identify]** a violation of this administrative regulation.

~~(5) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous anabolic steroid~~**[steroids]** or for an amount of an endogenous anabolic steroid**[amounts]** in excess of a concentration referred to in subsection (2) of this section shall be**[the concentrations referred to in paragraph (2) are]** subject to the penalties referred to in 810 KAR 1:028.

~~(6)(a) The detection of a Therapeutic AAS or metabolite derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.~~

~~(b) Each separate Therapeutic AAS detected in excess of a threshold level shall constitute a separate violation~~ ~~[The detection of more than one Therapeutic AAS or metabolite thereof in any sample in excess of the threshold level set forth in subsection (2) of this section shall constitute a violation for each anabolic steroid detected in excess of the one (1) Therapeutic AAS. There shall also be a violation if more than one Therapeutic AAS is present].~~

~~(7) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.~~

~~(8)(a) A claimed horse may be tested for the presence of AAS if the claimant requests the test when~~**[at the time]** the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the Senior State Steward.

~~(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, as well as expenses incurred after the date of the claim, and the costs of testing.~~

~~(c) If the test is negative, the claimant shall reimburse the entity paying for the testing~~**[regulatory body]** or the prior owner for the cost of the testing.

~~(d) While awaiting test results, a claimant:~~

~~1. (a) Shall exercise due care in maintaining and boarding a claimed horse; and~~

~~2. (b) Shall not materially alter a claimed horse.~~

~~(9) The gender of the horse from which a post-race biologic sample is collected~~ ~~[A post-race urine or blood sample collected from an intact male horse]~~ shall be identified to the state veterinarian and the testing laboratory.

~~(10) Only a licensed veterinarian may possess or administer a Therapeutic AAS.~~

~~(11) If there is a positive test for AAS from a sample taken from November 4, 2008 through December 30, 2008, it shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation. [Qualified ninety (90) day grace period:~~

~~(a) The ban on use of AAS set forth in this Section shall begin immediately upon the effective date of this emergency administrative regulation. Penalties for a positive finding of AAS from a sample taken during a period of ninety (90) days following the effective date of this emergency regulation shall not be imposed, except as follows:~~

~~1. A positive test for AAS from a sample taken during the final thirty (30) days of the ninety (90) day period shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation;~~

~~2. A positive finding of AAS in a post-race sample taken during the final thirty (30) days of the ninety (90) day period, accompanied by evidence of administration within the preceding sixty (60) days, shall constitute a violation of this administrative regulation;~~

~~(b) During the ninety (90) day period, a positive test for AAS, or a suspected violation of any provision of this section, shall be subject to investigation by the commission;~~

~~(c) The trainer and owner shall be notified if there is a positive test for AAS during the last sixty (60) days of the ninety (90) day period.]~~

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain on association grounds a test barn.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for prerace or post-race testing.

(3) The test barn shall be under the supervision and control of the commission [Authority] veterinarian.

Section 11.[40.] Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the commission [Authority] veterinarian. The commission [Authority] veterinarian shall take a sample from a horse that finished first in a race and a horse or horses designated by the stewards to determine if there has been a violation of this administrative regulation.

(2) The commission [Authority] veterinarian shall determine a minimum sample requirement for the commission [Authority] laboratory which shall be uniform for each horse.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the commission [Authority] laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the commission [Authority] laboratory shall be secured as the split sample.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission [Authority] veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission [Authority] veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer, and

2. Administered only with the permission and in the presence of the commission [Authority] veterinarian.

(d) A licensed veterinarian may attend to a horse in the test barn, but only with the permission and in the presence of the commission [Authority] veterinarian.

(6) Within five (5) business days of receipt of notification by the commission [Authority] laboratory of a positive finding, the commission [Authority] shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the commission [Authority] to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12.[44.] Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the samples for shipment to the commission [Authority] laboratory, addressed in Section 11[40] of this administrative regulation, until the split samples are packed and secured for shipment to the commission [Authority] laboratory. Split samples shall then be transferred to a freezer at a secure location approved and chosen by the commission [Authority].

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission [Authority] veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the time the freezer was closed, and verification that the lock was secured prior to and after opening of the freezer. An commission [Authority] veterinarian or his or her designee shall be present when the freezer is opened.

(e) Evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log.

(f) The commission [Authority] shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the specimen tested by the commission [Authority] laboratory be sent to split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission [Authority] to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer or[and] owner of the horse receives oral or written notice of the positive findings of the commission [Authority] laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the[such] testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission [Authority] veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission [Authority] shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to both the person requesting the testing and the commission [Authority]; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission [Authority] shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission [Authority].

Section 13.[42.] Split Sample Chain of Custody. (1) Prior to opening the split sample freezer, the commission [Authority] shall provide a split sample chain of custody verification form. The form to be used shall be the "Split Sample Chain of Custody Form". The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer by an commission [Authority] employee after notice to the owner, trainer, or designee thereof and an commission[Authority]-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission [Authority]. The Split Sample Chain of Custody Form[A form] shall be signed by both the owner's representative, if present, and the commission [Authority] representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to

the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The split sample chain of custody verification form shall be completed and signed by the representative of the commission [Authority] and the owner, trainer, or designee, if present.

(5) The commission [Authority] representative shall retain the original split sample chain of custody verification form and provide a copy for the owner, trainer, or designee, if requested.

Section 14.[43-] Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(3) A drug or medication[Medications] shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15.[44-] **Trainer Responsibility.** (1) A trainer shall be responsible for the condition of a horse[horses] in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance or metabolic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission [Authority] to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission [Authority] veterinarian if[when] a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring that this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the names of a mare in his or her care that has[mares that have] been bred and is[are] entered to race;

(g) Promptly notifying the commission [Authority] veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission [Authority] to the stewards and the commission [Authority] veterinarian and ensuring compliance with Section 22 [24] of this administrative regulation governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the stewards and the commission [Authority] veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited

practice has occurred as set forth in Section 20[49] of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed by 810 KAR 1:024, Section 4(1)(d) and (l) and 4(2);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at least twenty (20) minutes before post time or at a time otherwise prescribed before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills these[such] duties or the trainer is excused by the stewards pursuant to 810 KAR 1:008, Section 3(6); and

(p) Attending the collection of a biologic sample[saliva, urine, blood, or other sample or specimen] taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16.[45-] Licensed Veterinarians. (1) A veterinarian licensed by the commission [Authority] and practicing at a location under the jurisdiction of the commission [Authority] shall [at all times] be considered under the supervision of the commission [Authority] veterinarian and the stewards.

(2) A veterinarian shall report to the stewards or the commission [Authority] veterinarian a violation of this administrative regulation by a licensee.

Section 17.[46-] Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission [Authority] shall submit a KHRA -2 form, "Veterinarian Report of Horses Treated to be Submitted Daily," to the commission [Authority] veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission [Authority] veterinarian.

(2) The KHRA-2 form shall be signed by the treating practicing veterinarian.

(3) The KHRA-2 form shall be on file not later than the time prescribed on the next race day by the commission [Authority] veterinarian.

(4) The KHRA-2 form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission [Authority], or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a KHRA-2 form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission [Authority] laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 1:028.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 [49] of this administrative regulation shall report this fact immediately to the commission [Authority] veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The[Such] records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission [Authority] personnel.

Section 18.[17:] Veterinarian's List. (1) The commission [Authority] veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission [Authority] veterinarian, the horse is capable of competing in a race.

(3) The commission [Authority] veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission [Authority] veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

- (a) First incident - fourteen (14) days;
- (b) Second incident within a three hundred sixty-five (365) day period - thirty (30) days;
- (c) Third incident within a three hundred sixty-five (365) day period - one hundred eighty (180) days;
- (d) Fourth incident within a three hundred sixty-five (365) day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse shall be removed from the bleeder list only upon the direction of the commission [Authority] veterinarian, who shall certify in writing to the stewards the recommendation for removal.

(8) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission [Authority] veterinarian.

Section 19.[18:] Distribution of Purses, Barn Searches, and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the commission [Authority] laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance, or metabolic derivative in the biologic sample[saliva, urine, blood, body fluids, or other sample or specimen] taken from a horse.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission [Authority] laboratory issues a positive finding, the Executive Director of the commission [Authority] or the stewards shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the commission [Authority] detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission [Authority] laboratory and split sample laboratory, the remaining portion of the samples at the commission [Authority] laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission [Authority]. If a report indicating a positive finding has been issued, the commission [Authority] shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission [Authority] may freeze samples.

Section 20.[19:] Other Prohibited Practices. [In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited:]

(1) ~~[The possession or use of]~~ A drug, medication, or substance **shall not be possessed or used** by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission [Authority]:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission [Authority] or its designee, ~~[the possession or use of]~~ a drug, medication, or substance that has never been approved by the U.S. Food and Drug Administration (USFDA) for use in humans or animals **shall not be possessed or used** at a location under the jurisdiction of the commission [Authority]. The commission [Authority] shall determine whether to grant prior permission after consultation with the Equine Research Drug Council.

(3) ~~[The possession or use of]~~ The following blood-doping agents **shall not be possessed or used** at a location under the jurisdiction of the commission [Authority]:

- (a) Erythropoietin;
- (b) Darbepoietin;
- (c) Oxyglobin;
- (d) Hemopure; or
- (e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) ~~[The practice, administration, or application of]~~ A treatment, procedure, or therapy **shall not be practiced, administered, or applied** which may:

- (a) Endanger the health or welfare of a horse;[.] or
- (b) Endanger the safety of a rider.

(5) ~~[The use of]~~ Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy **shall not be used** unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission [Authority] shall administer the treatment;

(c) The commission [Authority] veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission [Authority] veterinarian on the prescribed form within twenty-four (24) hours of treatment. The form to be used is the "Kentucky Horse Racing Authority Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy".

(6) ~~[The administration of]~~ An alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse **shall not be used** within twenty-four (24) hours prior to post time for the race in which the horse is entered.

(7) Without the prior permission of the commission [Authority] veterinarian or his or her designee, based on standard veterinary practice for recognized conditions, ~~[the use of]~~ a nasogastric tube which is longer than six (6) inches **shall not be used** for the administration of any substance within twenty-four (24) hours prior to the post time of a race in which the horse is entered.

(8) A serum total carbon dioxide (TCO<sub>2</sub>) level **shall not exceed**~~[that exceeds]~~ 37.0 millimoles per liter in a horse; except no violation shall exist if the TCO<sub>2</sub> level is found to be normal for the horse following the quarantine procedure set forth in Section 21[20] of this administrative regulation.

(9) ~~[Possession or use of]~~ A blood gas machine **shall not be possessed or used** by a person other than an authorized representative of the commission [Authority] at a location under the jurisdiction of the commission [Authority]; and

(10) ~~[Possession or use of]~~ A shock wave therapy machine or radial pulse wave therapy machine **shall not be possessed or used** by anyone other than a veterinarian licensed by the commission [Authority] at a location under the jurisdiction of the commission [Authority].

Section 21.[20:] TCO<sub>2</sub> Testing and Procedures. (1)(a) The stewards or commission [Authority] veterinarian may order the prerace or post-race collection of blood samples from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as se-

lected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Prerace testing shall be done at the reasonable time, place, and manner directed by the commission [Authority] veterinarian.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO<sub>2</sub> concentration in the serum or plasma of the horse. If the commission [Authority] laboratory determines that the TCO<sub>2</sub> level exceeds thirty-seven (37) millimoles per liter, the Executive Director of the commission [Authority] shall be informed of the positive finding.

(d) Split Sample testing for TCO<sub>2</sub> may be requested by an owner or trainer in advance of the collection of the samples by the commission [Authority] veterinarian; however, the collection and testing of a split sample for TCO<sub>2</sub> testing shall be done at a reasonable time, place, and manner directed by the commission [Authority] veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO<sub>2</sub> is determined to exceed thirty-seven (37) millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission [Authority] veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by an commission [Authority] representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission [Authority] veterinarian is satisfied that the horse's level of TCO<sub>2</sub>, as registered in the original test, is physiologically normal for that horse, the stewards:

1. Shall permit the horse to race; and

2. ~~In such case, the stewards~~ May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO<sub>2</sub> level is physiologically normal.

Section 22.[24.] Postmortem Examination. (1) The commission [Authority] veterinarian may require a postmortem examination by a qualified designee of the commission [Authority] of a horse that dies or is destroyed at a location under the jurisdiction of the commission [Authority].

(2) The commission [Authority] or its designee shall coordinate with the trainer or owner to determine and address any insurance requirements.

(3) The commission [Authority] veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The commission [Authority] veterinarian may submit biologic samples ~~saliva, blood, urine, and other samples and specimens~~ collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The commission [Authority] shall bear the cost of an autopsy that is required by the commission [Authority].

(4) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 23.[22.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinarian Report of Horses Treated to be Submitted Daily, KHRA- 2", 8/97;

(b) "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", ~~(8-08)~~ (9-08) ~~(11-05)~~;

(c) "Kentucky Horse Racing Authority Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", 12/05; ~~and~~

(d) "Split Sample Chain of Custody Form", 12/05; and

(e) "Therapeutic AAS Administration Form", 9/08.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission [Authority], 4063 Ironworks Parkway, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT BECK, Chairman

ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

**PUBLIC PROTECTION CABINET**  
**Kentucky Horse Racing Commission**  
**Division of Enforcement**  
**(As Amended at ARRS, December 9, 2008)**

**810 KAR 1:028. Disciplinary measures and penalties.**

RELATES TO: KRS 230.215(2), 230.260(1), (3), 230.265(2), 230.290(2), 230.300, 230.320(1), 230.361(1), EO 2008-668

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3), EO 2008-668

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) authorizes the Authority to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission. ~~The function of~~ This administrative regulation establishes ~~is to establish~~ the disciplinary powers and duties of the stewards and the commission [Authority].

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the ~~such~~ other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked pursuant to this administrative regulation pertaining to:

(a) A violation involving Class A drugs;

(b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;

(c) A third or subsequent violation of 810 KAR 1:018 for an excessive TCO<sub>2</sub> level; or

(d) A third or subsequent violation of 810 KAR 1:018 involving shock wave~~s~~ or blood gas machines.

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(8) "Schedule" means the Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule.

(9) "Withdrawal guidelines" means "The Kentucky Horse Racing Commission Withdrawal Guidelines for Thoroughbreds[~~Authority Withdrawal Guidelines~~]."

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR shall be adjudicated in accordance with 810 KAR 1:029 and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a prerace or postrace sample that is not classified in the schedule, the commission [Authority] may establish a classification after consultation with either or both of the Racing Commissioners International and the Racing and Medication Testing Consortium or their successor.

(3) Stewards and the commission [Authority] shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission [Authority] that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) The commission [Authority] ~~may~~has the authority to suspend or revoke the commission[Authority]-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked or a horse that has been suspended, shall be denied access to locations under the jurisdiction of the commission [Authority] during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in Kentucky racing days.

(7) A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission [Authority]. If an appeal is pending, that fact shall be so noted.

(8) To protect the racing public and ensure the integrity of racing in the commonwealth, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(9) A veterinarian who administers, or is a party to, or facilitates the administration of, or is found to be responsible for the administration of a Class A drug to a horse, in violation of 810 KAR 1:018, Section ~~20~~19, or who has engaged in prohibited practices in violation of 810 KAR 1:018, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(11) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission [Authority] may charge the person with only one (1) offense, if the person demonstrates that he or she was not aware that overages were being administered, because the positive test results showing ~~the~~such overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission [Authority].

Section 3. Prior Offenses. (1) A prior offense[~~Prior offenses~~] occurring in Kentucky shall be considered, in accordance with the requirements of this section, by the stewards and by the commission [Authority] in assessing penalties. A prior offense occurring in another racing jurisdiction[~~Prior offenses occurring in other racing jurisdictions~~] may be considered by the stewards and the commission [Authority] in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record

containing violations that were committed both inside and outside of Kentucky.

(2) A prior offense[~~Prior offenses~~] occurring before September 7, 2005 shall not be considered.

(3) A prior offense[~~Prior offenses~~] involving a Class C drug or Class D drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005 and within one (1) year of the offense for which the person stands charged.

(4) A prior offense[~~Prior offenses~~] involving a Class A drug or Class B drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005.

(5) A prior offense[~~Prior offenses~~] shall not be considered for purposes of enhancing a penalty if the drug, medication, or substance that was the subject of the prior offense was of a lower class, pursuant to the schedule, than the drug, medication, or substance that is the subject of the offense for which the person stands charged.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations.

(1) Class A drug. A licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to three (3) years as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$5,000 to \$10,000; or

b. Forfeiture of purse money won.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) years to five (5) years as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$10,000 to \$20,000; or

b. Forfeiture of purse money won.

(c) For a third offense:

1. A suspension or revocation of licensing privileges for not less than five (5) years as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case. A revocation of licensing privileges may be permanent. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$20,000 to \$50,000; or

b. Forfeiture of purse money won.

(d) Suspension of owner's horse. A horse administered a Class A drug in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense, a suspension from zero to sixty (60) days;

2. For a second offense, a suspension from sixty (60) to 180 days; or

3. For a third offense, a suspension from 180 to 240 days.

(2) Class B drug. A licensee who administers, or is a party to or responsible for administering a Class B drug to a horse, in violation



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of 810 KAR 1:018 or more than one (1) NSAID to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to sixty (60) days as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$500 to \$1,000; or
- b. Forfeiture of purse money won.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from one (1) month to six (6) months as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked for six (6) months.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$1,000 to \$2,500; or
- b. Forfeiture of purse money won.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from two (2) months to one (1) year as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked for six (6) months or longer.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$2,500 to \$5,000; or
- b. Forfeiture of purse money won.

(d) Suspension of owner's horse. A horse administered a Class B drug, in violation of 810 KAR 1:018, or more than one (1) NSAID, in violation of 810 KAR 1:018, shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense, no suspension;

2. For a second offense, a suspension from zero to sixty (60) days; or

3. For a third offense, a suspension from sixty (60) to 180 days.

(3) Class C drug or overage of one (1) permitted NSAID.

(a) The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection:

1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 810 KAR 1:018; and

2. A licensee who is responsible for an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018:

- a. Phenylbutazone (>10 mcg/ml);
- b. Flunixin (>100 ng/ml); or
- c. Ketoprofen (>50 ng/ml).

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero to ten (10) days as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$250 to \$500; or
- b. Forfeiture of purse money won.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days as deemed appropriate by the com-

mission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$500 to \$1,000; or
- b. Forfeiture of purse money won.

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$1,000 to \$2,500; or
- b. Forfeiture of purse money won.

(4) Certain overages of Permitted NSAIDs and Furosemide Violations.

(a) The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection:

1. Notwithstanding Section 4(3) of this administrative regulation, a licensee who administers, or is a party to or responsible for administering an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018:

- a. Phenylbutazone (5.1-9.9 mcg/ml);
- b. Flunixin (21-99ng/ml); or
- c. Ketoprofen (11-49 ng/ml);

2. A licensee who administers, or is party to or responsible for administering an overage of Furosemide in an amount in excess of 100 ng/ml; and

3. A licensee who has not administered furosemide when the horse has been identified as a horse on furosemide.

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero to five (5) days as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$250 to \$500.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from zero days to ten (10) days as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$500 to \$1,000;

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from zero days to fifteen (15) days as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$1,000 to \$2,500; or
- b. Forfeiture of purse money won.

(5) Class D Drug.

(a) The penalty for a first violation involving a Class "D" drug shall be a written warning to the trainer and owner.

(b) For multiple violations involving a Class "D" drug the licensee may be subject to a suspension of licensing privileges from zero days to five (5) days as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

(c) The licensee whose licensing privileges may be suspended, and the commission [Authority] may enter into an agreement to

mitigate the suspension by agreeing to payment of a fine of no more than \$250.

Section 5. TCO2 penalties. A person who violates or causes the violation of Section ~~20[49]~~ (6), (7) or (8) of 810 KAR 1:018 shall be subject to the following penalties:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of \$1,000 to \$1,500; or
2. Forfeiture of purse money won.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of \$1,500 to \$3,000; or
2. Forfeiture of purse money won.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of \$3,000 to \$5,000; or
2. Forfeiture of purse money won.

(4) For subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to forfeiture of purse money won.

(5) Suspension of owner's horse. A horse that registers a TCO2 level in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:

(a) For a first offense, no suspension;

(b) For a second offense, a suspension from fifteen (15) days to sixty (60) days;

(c) For a third offense, a suspension from sixty (60) days to 180 days; and

(d) For a fourth offense, a suspension from eight (8) months to one (1) year.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes the violation of Section ~~20[49]~~ (5) (a), 19(5)(b), 19(9) or 19(10) of 810 KAR 1:018 shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from one (1) month to three (3) months as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$1,000 to \$5,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) months to six (6) months as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$5,000 to \$10,000.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from six (6) months to one (1) year as deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$10,000 to \$20,000.

Section 7. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. **The partners in a veterinary practice may provide services to horses if** ~~This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as~~ the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission [Authority];

(b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission [Authority].

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for ~~the~~**[such]** expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 8. Other Disciplinary Measures. (1) A person who violates 810 KAR 1:018, Section 6, regarding furosemide and adjunct bleeder medication use on race day shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 810 KAR 1:018, Section 8(3) for administering more than one (1) permissible Non-Steroidal Anti-

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Inflammatory Drug (NSAID) shall be treated the same as a person who has committed a Class B drug violation.

(3) A person who violates 810 KAR 1:018, Section ~~20~~~~(19)~~(2) shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission [Authority] after consultation with the Equine Research Drug Council.

(4) A person who violates 810 KAR 1:018, Section ~~20~~~~(19)~~(3) shall be treated the same as a person who has committed a Class A drug violation.

Section 9. Disciplinary Measures by Stewards. (1) Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case; or

(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the stewards may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed \$5,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 10. (1) Disciplinary measures by the commission [Authority]. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the commission [Authority] may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation; or

(c) Eject or exclude persons from association grounds for a length of time the commission [Authority] deems necessary.

(2) The licensee whose licensing privileges may be suspended or revoked and the commission [Authority] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed \$50,000 as may be deemed appropriate by the commission [Authority] in keeping with the seriousness of the violation and the facts of the case.

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

(a) "The Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08[11/05]; and

(b) "The Kentucky Horse Racing Commission Withdrawal Guidelines for Thoroughbreds[Authority Withdrawal Guidelines]", 09/08[2/06 is hereby incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission [Authority], 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 12. The requirements, implementation, and enforcement of this emergency administrative regulation shall begin on September 7, 2005.]

ROBERT BECK, Chairman

ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission Division of Enforcement (As Amended at ARRS, December 9, 2008)**

#### **811 KAR 1:090. Medication; testing procedures; prohibited practices.**

RELATES TO: KRS 230.215, 230.240(2), 230.260(1), 230.265(2), 230.290(2), (3), 230.310, 230.320(1), **EO 2008-668**

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3), (6), 230.320(1), **EO 2008-668**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(3), and 230.320 authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. **EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission.** This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibility relating to the health and fitness of horses.

Section 1. Definitions. (1) **"AAS" or "anabolic steroid" means an anabolic androgenic steroid.**

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3)[(2)] "Authority laboratory" means a laboratory chosen by the commission to test biologic samples[saliva, urine, blood, or other samples or specimens] from a horse taken under the supervision of the commission veterinarian.

(4)[(3)] "Location under the jurisdiction of the commission" or "Association grounds" means a track as defined in KRS 230.210(9).

(5)[(4)] "Permitted NSAIDs" means the following Permitted Nonsteroidal Anti-Inflammatory Drugs: Phenylbutazone and flunixin, if administered in compliance with Section 8 of this administrative regulation.

(6)[(5)] "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample.

(a) For the drugs, medications or substances listed in Section 2(3), 6, or 8 of this administrative regulation, a positive finding means a finding in excess of the established concentration level prescribed in those sections.

(b) Positive findings also include:

1. Substances present in the horse in excess of concentrations at which the substances might occur naturally; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7)[(6)] "Split sample" means the split sample portion of the biologic samples[saliva, urine, blood, or other sample or specimen] taken under the supervision of the commission veterinarian.

(8)[(7)] "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the

**biologic sample**[saliva, urine, blood, or other samples or specimens] taken from a horse under the supervision of the commission veterinarian.

**(9)[(8)]** "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining sample specimens for prerace and postrace testing.

**(10) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.**

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as specifically permitted in this administrative regulation, while participating in a race (betting or nonbetting), qualifying race, time trial, or official workout, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

- (a) Is a narcotic;
- (b) Could serve as an anesthetic or tranquilizer;
- (c) Could stimulate, depress or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or
- (d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications **shall not be present** in excess of established threshold concentrations set forth in this administrative regulation [~~shall be prohibited~~]. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for phenylbutazone and flunixin are set forth in Section 8 of this administrative regulation.

(4) A substance **shall not be** present in a horse in excess of a concentration at which the substance could occur naturally [~~shall be prohibited~~]. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or nonbetting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolic derivative thereof, prohibited by this section, if:

(a) A **biologic sample**[saliva, urine, blood, or other sample or specimen] from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or nonbetting), qualifying race, time trial, or official workout; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the "Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule (09/08)[(11/05)]" for classification of drugs and medications violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 1:095.

Section 3. Treatment Restrictions. (1) Except as set forth in Section 4 of this administrative regulation, or the oral administration of phenylbutazone as set forth in Section 8 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide and the one (1) adjunct bleeder medication set forth in Section 6 of this administrative regulation.

(3) Except as set forth in subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall use only single-use disposable needles, and shall dispose of them in a container provided by the commission.

(5) If a person regulated by the commission, has a medical condition which makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The judges may grant approval for a person to possess and use a needle and syringes at a location under the jurisdiction of the commission, but may establish necessary restrictions and limitations.

(6) An commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person other than a licensed veterinarian if:

- (1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;
- (2) The treatment is not injected; and
- (3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission.

Section 5. Anti-Ulcer Medications. The following anti-ulcer medications ~~may~~**shall be permitted to** be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to the race in which the horse is entered:

- (1) Cimetidine (Tagamet®): 8-20 mg/kg;
- (2) Omeprazole (Gastrogard®): 2.2 grams;
- (3) Ranitidine (Zantac®): 8 mg/kg; and
- (4) Sulcrafate: 2-4 grams.

Section 6. Furosemide and Adjunct Bleeder Medication Use on Raceday. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race (betting or nonbetting), qualifying race, time trial, or official workout.

(2) Only the commission veterinarian or a licensed veterinarian approved by the commission may administer furosemide prior to a race (betting or nonbetting), qualifying race, time trial, or official workout. If the furosemide is administered by a licensed veterinarian other than the commission veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian.

(3) ~~[The use of]~~ Furosemide **may be used**~~[shall be permitted]~~ under the following circumstances:

(a) Furosemide shall be administered on the grounds of a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The syringe employed in the injection shall be provided immediately to the commission veterinarian, judge or commission employee, if requested, to determine if there has been a violation of this administrative regulation.

(c) The furosemide dosage administered shall not be less than 100 mg and shall not exceed 250 mg.

(d) The specific gravity of postrace urine samples shall not be below 1.010. If the specific gravity of the postrace urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse eligible to receive furosemide and entered to race, pursuant to Section 7 of this administrative regulation, that does not show a detectable concentration of the drug in the postrace urine, plasma, or serum shall be in violation of this administrative regulation.

(f) The cost of administering furosemide shall be determined by the commission based on prevailing costs of veterinary services and supplies and shall be prominently posted in the racing office.

(g) The cost of administering furosemide shall be borne by the trainer.

(4) One of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

- (a) Aminocaproic acid;
- (b) Carbazochrome;
- (c) Conjugated estrogens; or
- (d) Tranexamic acid.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to qualify with furosemide if the commission veterinarian or a licensed veterinarian approved by the commission determines that it would be in the horse's best interest to race with furosemide.

(b) A horse eligible for furosemide and entered to start may be monitored by an commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2)(a) A horse determined to be a bleeder by the commission veterinarian or a licensed veterinarian approved by the commission shall not be eligible to qualify for five (5) days after determination for eligibility to receive furosemide has been made.

(b) A horse that has been placed on the furosemide list shall perform in a qualifying race with furosemide and meet the standards of the meeting before being eligible to race.

(c) A horse eligible for furosemide shall receive furosemide unless the licensed veterinarian submits a written request to the commission veterinarian to no longer administer furosemide to the horse. The request shall be on the form "Certificate of Termination of Lasix KHRA 100-5 (8/06)" and shall be submitted to the commission veterinarian.

(d) A horse that has been determined eligible to receive furosemide shall not have the administration of furosemide terminated in a pari-mutuel race until the horse has performed in a qualifying race without the use of furosemide.

(3)(a) After a horse has been determined by the commission veterinarian to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide for a period of sixty (60) calendar days unless it is determined by the commission veterinarian that it is detrimental to the welfare of the horse to not be on furosemide. The commission veterinarian shall complete the form "Declaration to Remove a Horse from the administration of Furosemide KHRA 100-1 (8/06)" if the commission veterinarian determines that the horse is no longer required to receive furosemide.

(b) If a horse is determined by the commission veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.

Section 8. Permitted Non-steroidal Anti-Inflammatory Drugs (NSAIDs) (1) ~~[The use of]~~ One (1) of the NSAIDs listed in this section **may be used**~~[shall be permitted]~~ not less than twenty-four (24) hours prior to post time for the race for which the horse is entered **if provided** the concentration in the horse's sample or specimen does not exceed the levels set forth in this section when tested post race.

(2) Phenylbutazone.

(a) A single oral or intravenous administration of phenylbutazone **may be administered**~~[shall be permitted]~~ not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

- (b) The phenylbutazone dosage administered shall not exceed:
- 1. Two (2) grams (g) oral; or
  - 2. Two (2) grams (g) intravenous.

(c) A post race sample of phenylbutazone reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be considered a violation of this section.

(d) The oral administration of phenylbutazone may be performed by the trainer.

(3) Flunixin.

(a) A single intravenous administration of flunixin **may be administered**~~[shall be permitted]~~ not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The flunixin dosage administered shall not exceed 500 mg.

(c) A post race sample of flunixin reported to exceed a level of twenty (20) nanograms per milliliter of blood plasma shall be considered a violation of this section.

(4) Ketoprofen.

(a) A single intravenous administration of ketoprofen **may be administered**~~[shall be permitted]~~ not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The ketoprofen dosage administered shall not exceed one (1) gram.

(c) A post race sample of ketoprofen reported to exceed a level of ten (10) nanograms per milliliter of blood plasma shall be considered a violation of this section.

(5) Phenylbutazone, flunixin or ketoprofen, injected intravenously, shall be administered by a licensed veterinarian approved by the commission. If there is no licensed veterinarian reasonably available, the commission veterinarian may administer the injection with the prior approval of the Chief Judge.

(6) Nonsteroidal anti-inflammatory drugs other than phenylbutazone, flunixin, or ketoprofen shall **not be used**~~[be prohibited]~~.

(7) A horse that has been administered phenylbutazone, flunixin, or ketoprofen shall be subject to a **biologic sample**~~[saliva, urine, blood, or other sample or specimen]~~ taken under the supervision of the commission veterinarian to determine the quantitative phenylbutazone, flunixin, or ketoprofen level present in the horse or the presence of other drugs in the horse.

(8) In a horse in which phenylbutazone has been administered according to subsection (2) of this section, flunixin and ketoprofen **shall not be used**~~[are prohibited]~~. In a horse in which flunixin has been administered according to subsection (3) of this section, phenylbutazone and ketoprofen **shall not be used**~~[are prohibited]~~. In a horse in which ketoprofen has been administered according to subsection (4) of this section, phenylbutazone and flunixin **shall not be used**~~[are prohibited]~~.

(9) A finding of phenylbutazone below a concentration of one (1) microgram per milliliter of plasma or serum shall not constitute a violation of subsection (8) of this section.

Section 9. Anabolic Steroids. (1) ~~An~~ ~~[The presence of]~~ exogenous anabolic androgenic steroid **shall not be present**~~[steroids ("AAS") is banned]~~ in a horse that is racing. The detection of ~~an~~~~[any]~~ exogenous anabolic steroid or metabolite **derivative**~~[thereof]~~ in a postrace biologic sample or a prerace biologic sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a postrace sample of ~~an~~~~[any]~~ endogenous anabolic steroid or metabolite **derivative**~~[thereof]~~ where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has~~[its metabolites, markers and/or any relevant ratio(s) as have]~~ been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level~~[levels]~~ shall constitute a violation of this administrative regulation. ~~[For purposes of this administrative regulation,]~~ The following shall be~~[are]~~ deemed to be ~~[the]~~ naturally occurring physiological levels:

(a) Boldenone (free and conjugated):

- 1. In male horses other than geldings - 15 ng/ml in urine; **and**
- 2. In geldings and female horses, boldenone shall not be permitted~~[. No boldenone shall be permitted in geldings or female horses]~~.

(b) Nandrolone (free and conjugated):

- 1. In geldings - 1 ng/ml in urine;
- 2. In fillies and mares - 1 ng/ml in urine; **and**
- 3. In male horses other than geldings - 45 ng/ml of metabolite, 5 $\Sigma$ -estrane-3 $\beta$ , 17  $\Sigma$ -diol in urine or a ratio in urine of 5 $\Sigma$ -estrane-3 $\beta$ , 17  $\Sigma$ -diol to 5 $\Sigma$ -estrane-3 $\beta$ , 17  $\Sigma$ -diol of >1:1; **and** ~~[.]~~

(c) Testosterone (free and conjugated):

- 1. In geldings - 20 ng/ml in urine; **and**
- 2. In fillies and mares - 55 ng/ml urine~~[.]~~

3. Male horses: in amounts in excess of amounts existing naturally in the untreated horse at normal physiological concentrations].

(3) In accordance with this subsection, a horse may receive one (1) Therapeutic AAS. [A horse may receive one of the following medications: boldenone, nandrolone, or testosterone ("Therapeutic AAS") if each of the following conditions are met:]

(a) The Therapeutic AAS shall [must] be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An [Any] owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration;

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant biologic [biological] sample is taken from the horse;

3. The sample is tested for anabolic steroids by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and

4. The commission [KHRC] has received a report from the laboratory of a negative finding regarding the sample;

(c) A report from the commission laboratory of a negative finding in a prerace sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a postrace sample shall [will] be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a prerace sample;

(d) The horse shall [may] not be entered to race until at least sixty (60) days after the administration of the Therapeutic AAS to the horse.[:]

(e) Procedures for administration of Therapeutic AAS:

1. [Only a licensed veterinarian may administer] A Therapeutic AAS shall be administered by a licensed veterinarian.

2. Other treatment methods shall be investigated prior to considering the use of Therapeutic AAS;

3. Medical records for the horse shall document:

a. Consideration of alternative treatment methods; and

b. The necessity for administering [consideration of the use of Therapeutic AAS and the medical records shall include documentation of the consideration of the alternative methods. The medical records for the horse shall include information documenting the necessity for the administration of] the Therapeutic AAS.

4.[3.] The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The Therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the Therapeutic AAS is administered; and

d. The diagnosis and justification for administration of the Therapeutic AAS to the horse.

5.[4.] The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6.[5.] The Therapeutic AAS Administration Form shall be delivered electronically to the Equine Medical Director of the Kentucky Horse Racing Commission within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically, the practitioner shall file the form with the Medical Director in person or through the mail. [It is the responsibility of] The submitting veterinarian shall [te] confirm receipt by the Equine Medical Director.

(4) If a horse is shipped into Kentucky from outside the state, prior to being eligible to race in Kentucky:

(a) The protocol in subsection (3) of this section shall be complied with in its entirety; or

(b)1. The trainer shall certify that he or she has had control of the horse for the sixty (60) days previous to racing and the horse has not been administered an anabolic steroid [anabolic steroids]; or

2. The trainer shall certify that he or she has not had control of the horse for the sixty (60) days previous to racing but shall acknowledge that he or she is responsible and accountable if [should] a postrace test identifies [identify] a violation of this administrative regulation.

(5) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous anabolic steroid [steroids] or for an amount of an endogenous anabolic steroid [amounts] in excess of a concentration referred to in subsection (2) of this section shall be [the concentrations referred to in subsection (2) of this section are] subject to the penalties referred to in 811 KAR 1:095 [810 KAR 1:028].

(6)(a) The detection of a Therapeutic AAS or metabolite derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate Therapeutic AAS detected in excess of a threshold level shall constitute a separate violation [The detection of more than one Therapeutic AAS or metabolite thereof in any sample in excess of the threshold level set forth in subsection (2) of this section shall constitute a violation for each anabolic steroid detected in excess of the one Therapeutic AAS. There shall also be a violation if more than one Therapeutic AAS is present].

(7) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(8)(a) A claimed horse may be tested for the presence of AAS if the claimant requests the test when [at the time] the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the Senior State Steward.

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, [as well as] expenses incurred after the date of the claim, and the costs of testing.

(c) If the test is negative, the claimant shall reimburse the entity paying for the testing [regulatory body] or the prior owner for the cost of the testing.

(d) While awaiting test results, a claimant:

1. [(a)] Shall exercise due care in maintaining and boarding a claimed horse; and

2. [(b)] Shall not materially alter a claimed horse.

(9) The gender of the horse from which a post-race biologic sample is collected shall be identified to the state veterinarian and the testing laboratory [A postrace urine or blood sample collected from an intact male horse shall be identified to the state veterinarian and the testing laboratory].

(10) Only a licensed veterinarian may possess or administer a Therapeutic AAS.

(11) If there is a positive test for AAS from a sample taken from November 4, 2008 through December 30, 2008, it shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation. [Qualified ninety (90) day grace period:

(a) The ban on use of AAS set forth in this section shall begin immediately upon the effective date of this administrative regulation. Penalties for a positive finding of AAS from a sample taken during a period of ninety (90) days following the effective date of this administrative regulation shall not be imposed, except as follows:

1. A positive test for AAS from a sample taken during the final thirty (30) days of the ninety (90) day period shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation.

2. A positive finding of AAS in a postrace sample taken during the final thirty (30) days of the ninety (90) day period, accompanied by evidence of administration within the preceding sixty (60) days, shall constitute a violation of this administrative regulation.

(b) During the ninety (90) day period, a positive test for AAS, or a suspected violation of any provision of this section, shall be subject to investigation by the commission.

(c) The trainer and owner shall be notified if there is a positive test for AAS during the last sixty (60) days of the ninety (90) day period.]

**Section 10.** Test Area. (1) A licensed association shall provide and maintain on association grounds a test area.

(2) The test area shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for prerace and posttrace testing.

(3) The test area shall be under the supervision and control of the commission veterinarian.

**Section 11.[40-] Sample Collection, Testing and Reporting.** (1) Sample collection shall be done in accordance with the instructions provided by the commission veterinarian. The commission veterinarian shall take a sample from a horse that finishes first in a race and a horse or horses designated by the judges to determine if there has been a violation of this administrative regulation.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the commission laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the commission laboratory shall be secured as the split sample.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer, and

2. Administered only with the permission and in the presence of the commission veterinarian.

(d) A licensed veterinarian may attend to a horse in the test barn, but only with the permission of, and in the presence of, the commission veterinarian.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The judges shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine that a continuance is necessary to effectively resolve the issue.

**Section 12.[44-] Storage and Shipment of Split Samples.** (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the samples **for shipment to the commission laboratory** addressed in Section 11[40] of this administrative regulation, until the split samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer at a secure location approved and chosen by the commission.

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the time the freezer was closed and verification that the lock was secured prior to and after opening of the freezer. An commission veterinarian or his or her designee shall be present when the freezer is opened.

(e) Evidence of a malfunction of a split sample freezer or of samples that are not in a frozen condition during storage shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the specimen tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding of the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining and shipping the split sample result shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to both the person requesting the testing and the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.

**Section 13.[42-] Split Sample Chain of Custody.** (1) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the "Split Sample Chain of Custody Form." The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer by an commission employee after notice to the owner, trainer, ~~or~~**or their** designee, and an commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy for the owner, trainer, or designee, if requested.

Section 14.~~[13.]~~ Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

- (a) The name of the product;
- (b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;
- (c) The name of the horse for which the product is intended or prescribed;
- (d) The dosage, duration of treatment and expiration date of the prescribed or dispensed product; and
- (e) The name of the trainer to whom the product was dispensed.

Section 15.~~[14.]~~ **Trainer Responsibility.** (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

- (a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;
- (b) Using the services of those veterinarians licensed by the commission to attend to a horse that is on association grounds;
- (c) The proper identity, custody, care, health, condition and safety of a horse in his or her care;
- (d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;
- (e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;
- (f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;
- (g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;
- (h) Promptly reporting the serious injury or death of a horse, in his or her care, at a location under the jurisdiction of the commission to the judges and the commission veterinarian and ensuring compliance with Section 22 ~~[24]~~ of this administrative regulation governing postmortem examinations;
- (i) Maintaining a medication record and medication status of a horse in his or her care;
- (j) Promptly notifying the judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20~~[19]~~ of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring proper bandages, equipment, and shoes;

(m) Ensuring the horse's presence in the paddock at least one (1) hour before post time or at a time otherwise prescribed by racing officials before the race in which the horse is entered;

(n) Personally attending in the paddock and supervising the preparation of a horse in his or her care, unless an assistant trainer fulfills these~~[such]~~ duties or the trainer is excused by the judges; and

(o) Attending the collection of a **biologic sample**~~[saliva, urine, blood, or other sample or specimen]~~ taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16.~~[15.]~~ Licensed Veterinarians. **(1)** A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the judges.

**(2)** A veterinarian shall report to the judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17.~~[16.]~~ Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a KHRA 100-2 form, "Veterinarian Report of Horses Treated to be Submitted Daily", to the commission veterinarian containing the following information:

- (a) The name of the horse treated;
  - (b) The type and dosage of drug or medication administered or prescribed;
  - (c) The name of the trainer of the horse;
  - (d) The date and time of treatment; and
  - (e) Other pertinent information requested by the commission veterinarian.
- (2) The KHRA-2 form shall be signed by the treating veterinarian.

(3) The KHRA-2 form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The KHRA-2 form shall be confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of the KHRA-2 form by the veterinarian or his or her designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 1:095.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20~~[19]~~ of this administrative regulation shall report this fact immediately to the commission veterinarian or to the judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

- (a) The name of the horse;
- (b) The trainer of the horse;
- (c) The date, time, amount and type of medication administered;
- (d) The drug or compound administered;
- (e) The method of administration; and
- (f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by commission personnel.

Section 18.~~[17.]~~ Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list if, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout



as observed by the commission veterinarian or a licensed veterinarian approved by the commission.

(4) A horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or nonbetting), qualifying race, time trial, or official workout for the following time periods:

- (a) First incident - fourteen (14) days;
- (b) Second incident within a 365 day period - thirty (30) days;
- (c) Third incident within a 365 day period - 180 days;
- (d) Fourth incident within a 365 day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse shall be removed from the bleeder list only upon the direction of the commission veterinarian, who shall certify in writing to the judges the recommendation for removal.

(8) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19.[18.] Distribution of Purses, Barn Searches and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the commission laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance or metabolic derivative in the biologic sample[saliva, urine, blood, body fluids or other sample or specimen] taken from a horse.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the laboratory issues a positive finding, the Executive Director of the commission or the judges shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the judges shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20.[19.] Other Prohibited Practices. [In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited:]

(1) ~~[The possession or use of]~~ A drug, medication, or substance shall not be possessed or used by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission;[.]

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the driver;

(2) Without the prior permission of the commission or its designee, ~~[the possession or use of]~~ a drug, medication or substance that has never been approved by the U. S. Food and Drug Administration (FDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Research Drug Council;

(3) ~~[The possession or use of]~~ The following blood doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

- (a) Erythropoietin;
- (b) Darbepoetin;
- (c) Oxyglobin®;
- (d) Hemopure®; or
- (e) Any substance that abnormally enhances the oxygenation of body tissue;

(4) ~~[The practice, administration or application of]~~ A treatment, procedure or therapy shall not be practiced, administered, or applied which may:

- (a) Endanger the health or welfare of a horse; or
- (b) Endanger the safety of a driver;

(5) ~~[The use of]~~ Extracorporeal shock wave therapy or radial pulse wave therapy shall not be used unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission shall administer the treatment;

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the prescribed form within twenty-four (24) hours of treatment. The form to be used is the "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy;"

(6) ~~[The administration of]~~ An alkalinizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours of a race in which the horse is entered;

(7) Without the prior permission of the commission veterinarian or his or her designee, based on standard veterinary practice for recognized conditions, ~~[the use of]~~ a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to the time of a race in which the horse is entered;

(8) A serum total carbon dioxide (TCO2) level shall not exceed~~[that exceeds]~~ 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered; except, no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21[20] of this administrative regulation;

(9) ~~[Possession or use of]~~ A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission; and

(10) ~~[Possession or use of]~~ A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21.[20.] TCO2 Testing and Procedures. (1)(a) The presiding judge may order the prerace or postrace collection of blood samples from, and prerace or post race testing of, a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as directed by the presiding judge, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Prerace and postrace testing shall be done at a reasonable time, place, and manner as directed by the presiding judge.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the Executive Director of the commission shall be informed of the positive finding.

(d) If the sample is taken prior to the race and the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has

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not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the judges shall scratch the horse from the race.

(e) Split Sample testing for TCO<sub>2</sub> may be requested by an owner or trainer in advance of the collection of the samples by the commission veterinarian; however, the collection and testing of a split sample for TCO<sub>2</sub> testing shall be done at a reasonable time, place and manner directed by the commission veterinarian.

(f) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO<sub>2</sub> is determined to exceed 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, and the licensed owner or trainer of the horse certifies in writing to the judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the judges but not for more than 120 hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be re-tested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by an commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, water, and, subject to the specific approval of the commission veterinarian, the horse's usual feed ration and supplements. In addition, subject to approval of the commission veterinarian, the horse shall be administered furosemide by the commission veterinarian in the same manner and at the same dosage as was provided to horses eligible for furosemide on the day which the horse in quarantine raced.

(f) If the commission veterinarian is satisfied that the horse's level of TCO<sub>2</sub>, as registered in the original test, is physiologically normal for that horse, the judges:

1. Shall permit the horse to race; and

2. ~~In this case, the judges~~ May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO<sub>2</sub> level is physiologically normal.

Section 22.[24-] Postmortem Examination. (1) The commission veterinarian may require a postmortem examination by a qualified designee of the commission of a horse that dies or is destroyed at a location under the jurisdiction of the commission.

(2) The commission or its designee shall coordinate with the trainer or owner to determine and address any insurance requirements.

(3) The commission veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The commission veterinarian may submit biologic samples~~[saliva, blood, urine, and other samples and specimens]~~ collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The commission shall bear the cost of a necropsy that is required by the commission.

(4) The presence of a prohibited drug, medication, substance or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse that died during a pari-mutuel race shall constitute a violation of this administrative regulation.

Section 23.[22-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule", ~~(8-08)~~(09-08)~~[(11-05)]~~;

(b) "Declaration to remove a horse from the Administration of Furosemide KHRA 100-1", 8/06;

(c) "Veterinary Report Of Horses Treated To be Submitted Daily, KHRA 100-2", 8/06;

(d) "Split Sample Chain of Custody Form, KHRA 100-3", 8/06;

(e) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy, KHRA 100-4", 8/06;

(f) "Certificate of Termination of Lasix, KHRA 100-5", 8/06; and

(g) "Therapeutic AAS Administration Form", 09/08.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the KHRA Web site at [www.khra.ky.gov](http://www.khra.ky.gov).

ROBERT BECK, Chairman

ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
Division of Enforcement  
(As Amended at ARRS, December 9, 2008)**

**811 KAR 1:095. Disciplinary measures and penalties.**

RELATES TO: KRS 230.215, 230.260(1), (3), 230.265(2), 230.290(2), 230.300, 230.320(1), EO 2008-668

STATUTORY COMMISSION: KRS 230.215(2), 230.240(2), 230.260(3), EO 2008-668

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the Commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission. This administrative regulation establishes the disciplinary powers and duties of the judges and the Commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the[such] other person or entity would care for or train a horse, or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the Schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the Schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the Schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the Schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked pursuant to this administrative regulation pertaining to:

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- (a) A violation involving a Class A drug;
  - (b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;
  - (c) A third or subsequent violation of 811 KAR 1:090 for an excessive TCO2 level; or
  - (d) A third or subsequent violation of 811 KAR 1:090 involving shock wave or blood gas machines.
- (8) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule.
- (9) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines for Standardbreds.

Section 2. General Provisions. (1) An alleged violation of 811 KAR 1:090 shall be adjudicated in accordance with this administrative regulation, and with 811 KAR 1:100, 811 KAR 1:105, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a prerace or postrace sample that is not classified in the Schedule, the Commission may establish a classification after consultation with either or both of the Racing Commissioners International and the Racing and Medication Consortium.

(3) The judges and the Commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the Withdrawal Guidelines shall be considered by the judges and the Commission as a mitigating factor to be used in determining violations and penalties.

(4) Pursuant to KRS 230.320, the Commission ~~may~~shall have the Commission to suspend or revoke the Commission-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked or a horse that has been suspended shall be denied access to locations under the jurisdiction of the Commission during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in calendar days.

(7) A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the Commission. If an appeal is pending, that fact shall be so noted.

(8) To protect the racing public and ensure the integrity of racing in the Commonwealth, a trainer whose penalty for a prior Class A violation or for a prior Class B third offense violation under this administrative regulation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association and the cost shall be borne by the trainer.

(9) A veterinarian who has engaged in prohibited practices in violation of 811 KAR 1:090, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing board of veterinary medicine by the judges.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(11) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the judges or the Commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing ~~the~~such overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the judges or the Commission.

(12) Any person who has been fined under this administrative regulation shall be suspended until ~~the~~ fine has been paid in full.

(13) ~~A fine shall not be paid~~Payment of a fine directly or indirectly by a person other than the person upon whom it is im-

posed ~~and any payment made~~shall be prohibited and shall not serve to abate or satisfy any penalty imposed.

(14) Written or printed notice of the assessment of a penalty shall be made to the person penalized, notice shall be posted immediately at the office of the association, and notice shall be forwarded immediately to the office of the Commission, the United States Trotting Association, and the Association of Racing Commissioners International by the presiding judge or clerk of the course.

(15) If the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in ~~such~~ a race.

(16) A horse shall not have the right to compete while owned or controlled wholly or in part by a person whose license has been suspended or revoked. An entry made by or for a licensee whose license has been suspended or revoked or for a horse which has been suspended shall be held liable for the entrance fee without the right to compete unless the penalty is removed.

(17) An association shall not willfully allow a person whose license has been suspended or revoked to drive in a race, or a suspended or disqualified horse to start in a race or a performance against time.

(18) An association shall not willfully allow the use of its track or grounds by a licensee whose license has been suspended or revoked, or a horse that has been suspended.

(19) If a person is excluded from a pari-mutuel association by the association, the Commission shall be notified.

(20) A person subject to current suspension, revocation, or expulsion shall not act as an officer of an association. An association shall not, after receiving notice of the penalty, employ or retain in its employ an expelled, suspended, disqualified or excluded person at or on the track during the progress of a race meeting.

(21) A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) During a race meet at another operating track in this state where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(22) A penalty imposed by the United States Trotting Association or the racing commissions of other states shall be recognized and enforced by the Commission unless application is made for a hearing before the Commission, during which the applicant ~~shall~~must show cause as to why the penalty should not be enforced against him in this state.

Section 3. Prior Offenses. (1) A prior offense occurring in Kentucky shall be considered, in accordance with the requirements of this section, by the judges and by the Commission in assessing penalties. A prior offense occurring in another racing jurisdiction shall be considered by the judges and the Commission in assessing penalties. The judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

(2) A prior offense occurring before ~~June 1, 2007~~the effective date of this administrative regulation shall not be considered.

(3) A prior offense involving a Class C drug or Class D drug may be considered as a prior offense if the act that constituted the offense was committed after ~~June 1, 2007~~the effective date of this administrative regulation and within one (1) year of the offense for which the person stands charged.

(4) A prior offense involving a Class A or B drug may be considered as a prior offense if the act that constituted the offense was committed after ~~June 1, 2007~~the effective date of this administrative regulation.

(5) A prior offense shall not be considered for purposes of enhancing a penalty if the drug, medication or substance that was the subject of the prior offense was of a lower class, pursuant to the Schedule, than the drug, medication or substance that is the subject of the offense for which the person stands charged.

Section 4. Penalties for Violations Not Related To Drugs or Medications. (1) A violation classified as a Category 1 violation shall be punishable by a suspension or revocation of licensing privileges from zero to thirty (30) days, in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine not to exceed \$5,000.

(2) A violation classified as a Category 2 violation shall be punishable by a suspension or revocation of licensing privileges from thirty (30) to sixty (60) days in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine not to exceed \$10,000.

(3) A violation classified as a Category 3 violation shall be punishable by a suspension or revocation of licensing privileges from sixty (60) days to permanent suspension or revocation in proportion to the seriousness of the violation. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine up to \$50,000 commensurate with the seriousness of the violation.

(4) A violation of 811 KAR Chapter 1 not otherwise specifically addressed shall be a Category 1 violation and shall be subject to the penalties set forth in subsection (1) of this section.

Section 5. Penalties for Violations Relating to Class A, B, C or D Drugs. (1) Class A drug. A licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, in violation of 811 KAR 1:090, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to three (3) years, in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

~~2. [(2)]~~ The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$5,000 to \$10,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) to five (5) years in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$10,000 to \$20,000.

(c) For a third offense:

1. A suspension or revocation of licensing privileges for not less than five (5) years in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. A revocation of licensing privileges may be permanent. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$20,000 to \$50,000.

(d) Suspension of the owner's horse. A horse administered a Class A drug, in violation of 811 KAR 1:090, shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense - a suspension from zero to sixty (60) days;
2. For a second offense - a suspension from sixty (60) - 180 days;
3. For a third offense - a suspension from 180 - 240 days.

(2) Class B drug. A licensee who administers, or is a party to or is responsible for administering a Class B drug to a horse in violation of 811 KAR 1:090, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to sixty (60) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$500 to \$1,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from one (1) month to six (6) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked..

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$1,000 to \$2,500.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from two (2) months to one (1) year in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$2,500 to \$5,000.

(d) Suspension of the owner's horse. A horse administered a Class B drug, in violation of 811 KAR 1:090, shall be subject to a suspension from racing in Kentucky, as follows:

1. For a first offense - no suspension;
2. For a second offense - a suspension from zero - 60 days;
3. For a third offense - a suspension from sixty (60) - 180 days;

**or**

(3) Class C drug. A licensee who administers, or is a party to or is responsible for administering a Class C drug to a horse, in violation of 811 KAR 1:090, or is responsible for administering an overage of phenylbutazone or flunixin, in violation of 811 KAR 1:090, Section 8, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to ten (10) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$250 to \$500.

(b) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) to thirty (30) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$500 to \$1,000.

(c) For a third offense within a 365-day period:

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1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$1,000 to \$2,500.

(4) Class D Drug.

(a) The penalty for a violation involving a Class D drug shall be a written warning to the trainer and owner.

(b) Multiple violations involving a Class D drug may result in a suspension of licensing privileges from zero to five (5) days in proportion to the seriousness of the violation and the facts of the case.

(c) The licensee whose licensing privileges may be suspended and the Commission may enter into an agreement to mitigate the suspension by agreeing to payment of a fine of not more than \$250.

Section 6. TCO2 penalties. A person who violates or causes the violation of 811 KAR 1:090, Section 20(6)[19(6)], (7), or (8) shall be subject to the following penalties:

(1) For a first offense involving a positive pre-race test result, the licensee shall be issued a warning.

(2) For a first offense involving a positive post-race test result:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$1,000 to \$1,500.

(3) For a second offense involving a prerace or postrace test result:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$1,500 to \$3,000.

(4) For a third offense involving a prerace or postrace test result:

(a) A suspension or revocation of licensing privileges from six (6) months to (1) year in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$3,000 to \$5,000.

(5) Subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to forfeiture of purse money won.

(6) Suspension of the owner's horse. A horse that registers a TCO2 level in violation of 811 KAR 1:090 shall be subject to suspension from racing in the Commonwealth of Kentucky as follows:

(a) For a first offense - no suspension;

(b) For a second offense - a suspension from fifteen (15) to sixty (60) days;

(c) For a third offense - a suspension from sixty (60) days to 180 days; and

(d) For a fourth offense - a suspension from eight (8) months to one (1) year.

(7) In any instance of a positive prerace TCO2 test result, the horse shall be scratched.

Section 7. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes a violation of 811 KAR 1:090, Section 20(5)(b)[19(5)(b)], (9), or (10) regarding a shock wave machine or blood gas machine shall be subject to the following penalties:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from one (1) to three (3) months in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$1,000 to \$5,000.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from ninety (90) to 180 days in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$5,000 to \$10,000.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from 180 days to one (1) year in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$10,000 to \$20,000.

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if [~~This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as~~] the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the Commission;

(b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the Commission.

(4) A person who is responsible for the care, training or veterinarian services provided to a horse formerly under the care, training or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;

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(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training and racing of the horse from a separate and independent checking account. Copies of the invoices for ~~the~~[such] expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 811 KAR 1:090, Section 6, regarding furosemide and adjunct bleeder medication use on raceday shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 811 KAR 1:090, Section 8(1), for exceeding the concentration levels allowed for phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(3) A person who violates 811 KAR 1:090, Section 8(10), for administering a non-steroidal anti-inflammatory drug other than phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(4) A person who is responsible for more than one oral or intravenous administration of a Nonsteroidal Anti-Inflammatory Drug (NSAID) within twenty-four (24) hours of post time, in violation of 811 KAR 1:090, Section 8(1), shall be treated the same as a person who has committed a Class B drug violation.

(5) A person who violates 811 KAR 1:090, Section ~~20(2)~~[19(2)], shall be treated the same as a person who has committed a Class A drug violation.

(6) A person who violates 811 KAR 1:090, Section ~~20(3)(a)~~[19(3)(a)], shall be treated the same as a person who has committed a Class A drug violation.

(7) A person who violates Section 2(15) of this administrative regulation shall be subject to a suspension or revocation of licensing privileges for up to one (1) year in proportion to the seriousness of the violation and the facts of the case and shall forfeit purse money won while in violation of Section 2(15). The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to \$5,000.

(8) An association in violation of Section 2(16), (17), or (19) of this administrative regulation shall, together with its officers, be subject to a suspension or revocation of licensing privileges for up to thirty (30) days in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to \$5,000.

Section 10. Disciplinary Measures by Judges. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the judges may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case; or

(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or from a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the judges may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in

an amount not to exceed \$5,000 in proportion to the seriousness of the violation and the facts of the case.

Section 11. Disciplinary Measures by the Commission. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the Commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or a licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation; or

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the Commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be excluded or ejected from association grounds or a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to \$50,000.

(3) Upon appeal of a matter determined by the judges the Commission may or hearing de novo of a matter determined by the judges, reverse or revise the judges' ruling in whole or in part; except as to findings of fact by the judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the judges for a foul in a race.

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

(a) "The Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule", (9/08)[(11/05)]; and

(b) "The Kentucky Horse Racing Commission Withdrawal Guidelines for Standardbreds", (09/08)[(4/07)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site, [www.khra.ky.gov](http://www.khra.ky.gov).

ROBERT BECK, Chairman

ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859)246-2039

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Office of Health Policy

(As Amended at ARRS, December 9, 2008)

### 902 KAR 19:030. Release of public data sets for health care discharge data.

RELATES TO: KRS[64.970-64.992,] 216.2920-216.2929

STATUTORY AUTHORITY KRS: 194A.050(1), 216.2923(2)(c), 216.2925(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2923 mandates that the Cabinet for Health and Family Services publish and make available information relating to the health care delivery and finance system that is in the public interest. KRS 216.2927 mandates that personally identifying data collected by the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 902 KAR 19:020, while

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maintaining patient confidentiality and further protecting personally identifying information.

Section 1. Definitions. (1) "Cabinet" is defined by[at] KRS 216.2920(2).

(2) "Data" means the information collected pursuant to 902 KAR 19:020[is that information described at length in KRS 216.2927(4) to (4)].

(3) "Encounter-level" means the data record of a single instance of hospitalization, outpatient service/ambulatory surgery, emergency department, or observation stay billing record contained in a data file.

(4) "Health care provider" is defined by[ia] KRS 216.2920(5).

(5) "Public" means a person or group not directly responsible for the collection, maintenance, custody, or dissemination of data[as defined] for purposes of this administrative regulation.

(6) "Report" means a summary or compilation of data disseminated to the public.

Section 2. Encounter-Level Data. (1) Notwithstanding the provisions of KRS 216.2927(3) regarding single copies of aggregate data, encounter-level[hospital discharge] data shall be released in [one (1)-of] the following standard file format[formats] described in the table below:

Encounter-Level Standard File Format - Data Element Contained in the File if information is available		
File Type		
Provider ID		
Quarter & Year of Discharge		
Patient Gender		
Patient Age Group		
Patient Race/Ethnicity		
Patient Resident County		
Type of Admission		
Source of Admission		
Diagnosis 1 (Primary)		
Diagnosis 2		
Diagnosis 3		
Diagnosis 4		
Diagnosis 5		
Diagnosis 6		
Diagnosis 7		
Diagnosis 8		
Diagnosis 9		
Procedure 1 (Primary)		
Procedure 2		
Procedure 3		
Procedure 4		
Procedure 5		
Procedure 6		
Length of Stay		
Total Charges		
Discharge Status		
Payer 1 (Primary)		
Payer 2		
Payer 3		
Diagnostic related group		
Medicare <b>Severity[Services]</b> - Diagnostic related group		
Major Diagnostic Category		
Diagnosis Version Qualifier		
Event Code 1		
Event Code 2		

[Encounter-Level Standard File Formats		
Data Element Contained in the File if Marked with an "X"	File 1	File 2
Provider ID	X	X
Quarter & Year of Discharge	X	-
Patient Gender	X	X
Patient Age Group	X	X

Patient Race/Ethnicity	X	-
Patient Marital Status	X	-
Patient Resident County	X	X
Type of Admission	X	X
Source of Admission	X	-
Diagnosis 1 (Primary)	X	X
Diagnosis 2	X	X
Diagnosis 3	X	X
Diagnosis 4	X	-
Diagnosis 5	X	-
Diagnosis 6	X	-
Diagnosis 7	X	-
Diagnosis 8	X	-
Diagnosis 9	X	-
Procedure Method	X	X
Procedure 1 (Primary)	X	X
Procedure 2	X	X
Procedure 3	X	X
Procedure 4	X	-
Procedure 5	X	-
Procedure 6	X	-
Length of Stay	X	X
Total Charges	X	X
Discharge Status	X	X
Payer 1 (Primary)	X	X
Payer 2	X	-
Payer 3	X	-
All payer refined-diagnostic-related groups	X	-
International Classification of Disease Version 9 Three-digit Category]	X	X

Section 3. Summary Data. (1) The cabinet shall not release data identified in KRS 216.2927.

(2) The cabinet may include the following data elements, in any combination thereof, for encounter-level, aggregate, and summary report formats:

(a) Diagnoses and procedures, primary, and any other level;

(b) Diagnosis and procedure groupings, including diagnostic related groups, major diagnostic categories, and agency for health care policy and research clinical classification system;

(c) Patient gender;

(d) Age or age grouping;

(e) Discharge status;

(f) Payor category, all levels;

(g) Charge information, total and ancillary;

(h) County of patient residence;

(i) County of provider;

(j) Ancillary department information;

(k) Length of stay, total, and average;

(l) External cause of injury; or

(m) Mortality rate. Reports including mortality rates shall be adjusted by severity of illness by reputable grouping software, either on a contract basis or by the cabinet.

(3) At least thirty (30) working days prior to the release or dissemination of the reports identified in subsection (2) of this section, the cabinet shall permit a health care provider identified in the report the opportunity to verify the accuracy of information pertaining to the provider. Within the thirty (30) day period, the provider may submit to the cabinet corrections or errors in the compilation of the data, with supporting evidence.

(4) The cabinet shall correct data found to be in error and shall include additional commentary as requested by the provider for major deviations in the individual provider's data from the statewide average.

(5) Data shall not be withheld from the public or another interested party based solely on an unfavorable profile of a provider or group of providers, if the data is deemed reliable, accurate, and sufficiently free of error, as determined by the cabinet and pursuant to 902 KAR 19:020, Section 5.

Section 4. Release of Data. (1) A person or agency shall, as a condition for receiving data from the cabinet, sign an "Agreement for Use of Kentucky Health Claims Data". A person or agency receiving data shall agree to adhere to the confidentiality requirements established in subsection (2) of this section and KRS 216.2927.

(2) To protect patient confidentiality:

(a) A report or summary of data that consists of five (5) or fewer records shall not be released or made public;

(b) A person or agency receiving data shall not redistribute or sell data in the original format;

(c) Distribution of data received by the cabinet shall be approved by the custodial agency prior to receipt of the data;[-]

(d) The data collected pursuant to 902 KAR 19:020 shall be used only for the purpose of health statistical reporting and analysis or as specified in the user's written request for the data; and[-]

(e) A user shall not attempt to link the public use data set with an individually identifiable record from another data set.

Section 5. Fees. (1) The cabinet shall charge \$1,500 for the purchase of a single copy of [File 4 of] an annual, public-use data set[-, and \$500 for the purchase of a single copy of File 2 of an annual, public-use data set].

(2) A public-use data set will be available for purchase no later than sixty (60) days after the end of the facility reporting period as established in 902 KAR 19:020, Section 4. Special requests for data shall be prioritized and completed at the discretion of the custodial agency.

Section 6. Incorporation by Reference. (1) "Agreement for Use of Kentucky Health Claims Data", September 2008[August 2000"] is incorporated by reference.

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

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 9, 2008

FILING WITH LRC: October 11, 2008 at noon

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Community Alternatives**  
**(As Amended at ARRS, December 9, 2008)**

**907 KAR 1:835. Michelle P. waiver services and reimbursement.**

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n[b, d, n]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced registered nurse practitioner" or "ARNP" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(6) "Behavioral support specialist" means an individual who has:

(a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and

(b) and] At least one (1) year of experience in behavioral programming.

(7) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 7 of this administrative regulation and consumer-directed option services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(8) "Budget allowance" is defined by KRS 205.5605(1).

(9) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(10) "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(11) "Consumer" is defined by KRS 205.5605(2).

(12) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(13) "Covered services and supports" is defined by KRS 205.5605(3).

(14) "DCBS" means the Department for Community Based Services.

(15) "Department" means the Department for Medicaid Services or its designee.

(16) "Developmental disability" means a severe, chronic disability that:

(a) Is attributable to:

1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to mental retardation resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with mental retardation and which requires treatment or services similar to those required by persons with mental retardation;

(b) Is manifested prior to the individual's 22nd birthday;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;



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5. Self-direction; or

6. Capacity for independent living.

(17) "Direct-contact staff" means an individual hired by a Michelle P. waiver provider to provide services to the recipient and who:

(a) 1. a. Is eighteen (18) years of age or older; and

b. [2.] Has a high school diploma or GED; or

2.a. [(b)1.] Is twenty-one (21) years of age or older; and

b. [2.] Is able to communicate with a recipient in a manner that the recipient or recipient's legal representative or family member can understand [adequately communicate with recipients and staff];

[b.] [(e)] Has a valid Social Security number or valid work permit if not a U.S. citizen;

[c.] [(d)] Can understand and carry out simple instructions;

[d.] [(e)] Has the ability to keep simple records; and

[e.] [(f)] Is managed by the provider's supervisory staff.

(18) "Electronic signature" is defined by KRS 369.102(8).

(19) "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(20) ["Home and community support services" means nonresidential and nonmedical home and community-based services and supports that:

(a) Meet the consumer's needs; and

(b) Constitute a cost-effective use of funds.

(24) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081 [Operation and services; home health agencies]; and

(b) Medicare and Medicaid certified.

(20) "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(21) [(22)] "Level of care determination" means a determination that an individual meets the Michelle P. waiver service [ICF-MR-DD] level of care criteria established in Section 5 of this administrative regulation.

(22) [(23)] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(23) [(24)] "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(24) [(25)] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3)

(25) [(26)] "Mental retardation" means an individual has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;

2. Self-care;

3. Home living;

4. Social or interpersonal skills;

5. Use of community resources;

6. Self-direction;

7. Functional academic skills;

8. Work;

9. Leisure; or

10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(26) [(27)] "Michelle P. recipient" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the Michelle P. waiver service [ICF-MR-DD] level of care criteria established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(27) [(28)] "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.

(28) [(29)] "Occupational therapist" is defined by KRS 319A.010(3).

(29) [(30)] "Occupational therapy [therapist] assistant" is defined by KRS 319A.010(4).

(30) [(31)] "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(31) [(32)] "Physical therapist" is defined by KRS 327.010(2).

(32) [(33)] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(33) [(34)] "Physician assistant" or "PA" is defined by KRS 311.840(3).

(34) [(35)] "Plan of care" or "POC" means a written individualized plan developed by:

(a) A Michelle P. recipient or a Michelle P. recipient's legal representative;

(b) The case manager or support broker; and

(c) Any other person designated by the Michelle P. recipient if the Michelle P. recipient designates another person.

(35) [(36)] "Plan of treatment" means a care plan used by an ADHC center.

(36) [(37)] "Psychologist" is defined by KRS 319.010(8).

(37) [(38)] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(38) [(39)] "Qualified Mental Retardation Professional" or "QMRP" is defined by KRS 202B.010(12).

(39) [(40)] "Registered nurse" or "RN" means a person who:

(a) Meets the definition established in KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

(40) [(41)] "Representative" is defined by KRS 205.5605(6).

(41) [(42)] "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR 1:145, Section 7.

(42) [(43)] "Sex crime" is defined by KRS 17.165(1).

(43) [(44)] "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(44) [(45)] "Speech-language pathologist" is defined by KRS 334A.020(3).

(45) [(46)] "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct-care staff and who:

(a) 1. a. Is eighteen (18) years of age or older; and

b. [2.] Has a high school diploma; or

2.a. [(b)1.] Is twenty-one (21) years of age or older; and

b. [2.] Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability;

[b.] [(e)] Is able to adequately communicate with the recipients, staff, and family members;

[c.] [(d)] Has a valid Social Security number or valid work permit if not a U.S. citizen; and

[d.] [(e)] Has the ability to perform required record keeping.

(46) [(47)] "Support broker" means an individual chosen by a consumer from an agency designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(47) [(48)] "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes;

(g) Budget allowance; and

(h) Six (6)-month budget.

(48) [(49)] "Violent crime" is defined by KRS 17.165(3) [17:165(3)].

Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver services, excluding consumer-directed option services, a provider shall be:

(a) Licensed in accordance with:

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1. 902 KAR 20:066 if an adult day health care provider;
  2. 902 KAR 20:078 if a group home;
  3. 902 KAR 20:081 if a home health service provider; or
  4. 902 KAR 20:091 if a community mental health center; or
- (b) Be certified by the department in accordance with 907 KAR 1:145, Section 3, if a provider type not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver service provider shall:

(a) Provide services to Michelle P. waiver recipients:

1. Directly; or

2. Indirectly through a subcontractor;

(b) Comply with the following administrative regulations and program requirements:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. 907 KAR 1:673;

(c) Not enroll a Michelle P. recipient for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(d) Be permitted to accept or not accept a Michelle P. recipient.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

(a) A clinical record for each Michelle P. recipient that shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP-351 and signed by the:

a. Assessment team; and

b. Department;

3. A completed MAP 109;

4. A copy of the MAP-350 signed by the recipient or his or her legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, a Michelle P. recipient;

9. Documentation that the Michelle P. recipient receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the Michelle P. waiver recipient's home;

d. Itemization of each service delivered;

e. The Michelle P. recipient's arrival and departure time, excluding travel time, if the service was provided outside the recipient's home;

f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the Michelle P. recipient's needs; and

g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:

1. At least six (6) years from the date that a covered service is provided; or

2. For a minor, three (3) years after the recipient reaches the age of majority under state law[~~,- whichever is longest~~].

(2) Upon request, a Michelle P. provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) United States Department for Health and Human Services or its designee;

(d) United States Government Accountability Office or its designee;

(e) Kentucky Office of the Auditor of Public Accounts or its designee; or

(f) Kentucky Office of the Attorney General or its designee.

Section 4. Michelle P. Recipient Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. recipient who:

(a) Is determined by the department to meet the Michelle P. waiver service[ICF-MR-DD] level of care criteria[requirements] in accordance with Section 5 of this administrative regulation; and

(b) Would, without waiver services, be admitted to an ICF-MR-DD or a nursing facility.

(2) The department shall perform a Michelle P. waiver service[an ICF-MR-DD] level of care determination for each Michelle P. recipient at least once every twelve (12) months or more often if necessary.

(3) A Michelle P. waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. An environmental and minor home adaptation;

2. Case management; or

3. An environmental and minor home adaptation and case management;

(b) Is an inpatient of:

1. A hospital;

2. A nursing facility; or

3. An ICF-MR-DD;

(c) Is a resident of a licensed personal care home; or

(d) Is receiving services from another Medicaid home and community based services waiver program.

(4) A Michelle P. waiver provider shall inform a Michelle P. recipient or his legal representative of the choice to receive:

(a) Michelle P. waiver services; or

(b) Institutional services.

(5) An eligible Michelle P. recipient or the recipient's legal representative shall select a participating Michelle P. waiver provider from which the recipient wishes to receive Michelle P. waiver services.

(6) A Michelle P. waiver provider shall use a MAP-24 to notify the department of a Michelle P. service recipient's:

(a) Termination from the Michelle P. waiver program; or

(b) 1. Admission to an ICF-MR-DD or nursing facility for less than sixty (60) consecutive days; or

2. Return to the Michelle P. waiver program from an ICF-MR-DD or nursing facility within sixty (60) consecutive days;

(c) Admission to a hospital; or

(d) Transfer to another waiver program within the department.

(7) Involuntary termination of a service to a Michelle P. recipient by a Michelle P. provider shall require:

(a) Simultaneous notice to the recipient or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) Submittal of a MAP-24 to the department at the time of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the recipient with the name, address, and telephone number of each current provider in the state;

2. Provide assistance to the recipient in making contact with another provider;

3. Arrange transportation for a requested visit to a provider site;

4. Provide a copy of pertinent information to the recipient or legal representative;

5. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured;

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6. Continue to provide supports until alternative services are secured; and

7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service[ICF-MR-DD] Level of Care Criteria. (1) **An individual shall be determined to have met the [meets] Michelle P. waiver service level of care criteria if the individual:**

(a) Requires~~[To meet ICF-MR-DD level of care criteria, an individual shall require]~~ physical or environmental management or rehabilitation and:

1. ~~Has~~~~(a) Have~~ a developmental disability or significantly sub-average intellectual functioning ~~[and requires]~~~~[require]~~~~[a planned program of active treatment to attain or maintain an optimal level of functioning];~~

2. Requires~~(b) Require~~ a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:

a.~~[1.]~~ Learning fundamental living skills;

b.~~[2.]~~ ~~[Learning to live happily and safely within his or her limitations;~~

c.~~[3.]~~ Obtaining educational experiences which will be useful in self-supporting activities; or

c.~~[d.]~~~~[4.]~~ Increasing awareness of his or her environment; or

3. ~~Has~~~~(e) Have~~ a primary psychiatric diagnosis if:

a.~~[1.]~~ Possessing care needs listed in **subparagraph 1 or 2 of this paragraph [(a) or (b)]**;

b.~~[2.]~~ The individual's mental care needs are adequately handled in an ICF-MR-DD; and

c.~~[3.]~~ The individual does not require psychiatric inpatient treatment.

(b) Has a developmental disability and meets the:

1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or

2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).

(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet **the Michelle P. waiver service**[ICF-MR-DD] level of care criteria.

(3) The department shall not determine that an individual fails to meet **the Michelle P. waiver service**[ICF-MR-DD] level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Enrollment. (1) The department shall enroll an individual on a 1st priority basis if the individual:

(a) Has an urgent need pursuant to 907 KAR 1:145, section 7(7)(b), regardless of whether the individual is on the SCL waiting list; and

(b) Meets the eligibility criteria established in Section 4 of this administrative regulation.

(2) After all first priority basis individuals have been enrolled, the department shall enroll remaining SCL waiting list individuals who meet the eligibility criteria established in Section 4 of this administrative regulation in accordance with the SCL waiting list provisions established in 907 KAR 1:145, Section 7.

(3) After all individuals have been enrolled pursuant to subsections (1) and (2) of this Section, the department shall utilize a first come, first served priority basis to enroll an individual who meets the eligibility criteria established in Section 4 of this administrative regulation.

**(4) The department shall enroll into the Michelle P. waiver program no more than:**

**(a) 3,000 individuals during the first state fiscal year (beginning July 1, 2008);**

**(b) A total of 4,500 individuals by the end of the second state fiscal year (June 30, 2010); and**

**(c) A total of 6,000 individuals by the end of the third state fiscal year (June 30, 2011).**

Section 7. Covered Services. (1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the Michelle P. recipient;

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the Michelle P. recipient's family. A CDO service may be provided by a Michelle P. recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment which shall:

1. Be completed by the department;

2. Identify a Michelle P. waiver recipient's needs and the services the Michelle P. waiver recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;

3. Evaluate a Michelle P. waiver recipient's physical health, mental health, social supports, and environment;

4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, QMRP, or ARNP;

5. Be conducted by an assessment team; and

6. Include at least one (1) face-to-face home visit by a member of the assessment team with the Michelle P. waiver recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall:

1. Be completed by the department;

2. Determine the continuing need for Michelle P. waiver services and, if appropriate, CDO services;

3. Be performed at least every twelve (12) months;

4. Be conducted using the same procedures used in an assessment service; and

5. Not be retroactive;

(c) A case management service which [shall]:

1. **Shall** consist of coordinating the delivery of direct and indirect services to a Michelle P. waiver recipient;

2. **Shall** be provided by a case manager who shall:

a. Arrange for a service but not provide a service directly, **except as allowed in subparagraph 8 of this paragraph;**

b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Michelle P. recipient's home, in the ADHC center, or the adult day training provider's location.

c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan of care; **and**

**d. Meet the requirements of subsection (4) of this section;**

[d. Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

(i) A QMRP;

(ii) A registered nurse who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(iii) An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(iv) A qualified social worker who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(v) A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(vi) A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

(vii) A certified psychologist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability; or

(viii) A licensed psychological practitioner at least two (2) years of experience working with individuals with mental retardation or a developmental disability;

e. Be an RN;

f. Be an LPN;

g. Be a qualified social worker;

h. Be an LMFT;

i. Be an LPCC;

j. Be a certified psychologist; or

k. Be a licensed psychological practitioner;]

3. **Shall** not include a group conference;

4. **Shall** include development of a plan of care that shall:

a. Be completed on the MAP 109 using **Person Centered Planning: Guiding Principles**[person-centered guiding principles];

b. Reflect the needs of the Michelle P. recipient;

c. List goals, interventions, and outcomes;

d. Specify services needed;

e. Determine the amount, frequency, and duration of services;

f. Provide for reassessment at least every twelve (12) months;

g. Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and

h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of **the Michelle P. waiver service**[ICF-MR-DD] level of care;

5. **Shall** include documentation with a detailed monthly summary note which includes:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and Michelle P. waiver recipient, family member, or legal representative; [and]

6. **Shall** include requiring a Michelle P. recipient or legal representative to sign a MAP-350 form at the time of application or re-application and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services; [and]

7. **Shall** not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient, **except as allowed in subparagraph 8 of this paragraph; and**

**8. Contingent upon approval by the Centers for Medicare and Medicaid Services, may be provided by an agency which also provides any other Michelle P. waiver service to the recipient if the agency meets the provider qualifications established in Section 2 of this administrative regulation and:**

**a. Provided case management to the recipient in another of the department's waiver programs prior to the establishment of the Michelle P. waiver service program; or**

**b. Provided other services via the Cabinet for Health and Family Services to the recipient prior to the establishment of the Michelle P. waiver service program.];**

(d) A homemaker service which shall consist of general household activities and shall:

1. Be provided by direct-care staff;

2. Be provided to a Michelle P. waiver recipient:

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service which shall:

1. Be age appropriate;

2. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or other activities of daily living;

3. Be provided by direct-care staff;

4. Be provided to a Michelle P. recipient:

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and

c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note which shall include:

- The month, day, and year for the time period each note covers;
- Progression, regression, and maintenance toward outcomes identified in the plan of care;
- The signature, date of signature, and title of the individual preparing the note; and
- The beginning and ending time of service;

(f) An attendant care service which shall consist of hands-on care that is:

- Provided by direct-care staff to a Michelle P. waiver recipient who:
  - Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and
  - Has a family member or other primary caretaker who is employed and not able to provide care during working hours;
- Not of a general housekeeping nature;
- Not provided to a Michelle P. waiver recipient who is receiving any of the following Michelle P. waiver services:
  - Personal care;
  - Homemaker;
  - ADHC;
  - Adult day training;
  - Community living supports; or
  - Supported employment; and

4. Include documentation with a detailed note which shall include:

- The month, day, and year for the time period each note covers;
- Progression, regression, and maintenance toward outcomes identified in the plan of care;
- The signature, date of signature, and title of the individual preparing the note; and
- Beginning and ending time of service;

(g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:

- Provided by direct-care staff who provide services at a level which appropriately and safely meet the medical needs of the Michelle P. waiver recipient ~~[in the following settings:~~
- ~~The Michelle P. waiver recipient's place of residence; or~~
- ~~An ADHC center during posted hours of operation];~~
- Provided to a Michelle P. waiver recipient who has care needs beyond normal baby sitting; ~~[and]~~
- Used no less than every six (6) months;
- Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if provided to a child under age 21 (twenty-one) in an ADHC center; and

5. Include documentation with a detailed note which shall include:

- The month, day, and year for the time period each note covers;
- Progression, regression, and maintenance toward outcomes identified in the plan of care;
- The signature, date of signature, and title of the individual preparing the note; and
- The beginning and ending time of service;

(h) An environmental and minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P. waiver recipient and which shall:

- Meet all applicable safety and local building codes;
- Relate strictly to the Michelle P. waiver recipient's disability and needs;
- Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the Michelle P. waiver recipient;
- Be submitted on form MAP-95 for prior authorization; and
- Include documentation with a detailed note which shall include:
  - The month, day, and year for the time period each note covers;

- Progression, regression, and maintenance toward outcomes identified in the plan of care; and
- The signature, date of signature, and title of the individual preparing the note;

(i) Occupational therapy which shall be:

- A physician ordered evaluation of a Michelle P. ~~waiver~~ recipient's level of functioning by applying diagnostic and prognostic tests;
- Physician-ordered services in a specified amount and duration to guide a Michelle P. waiver ~~recipient~~~~[member]~~ in the use of therapeutic, creative, and self-care activities to assist the recipient in obtaining the highest possible level of functioning;
- Training of other Michelle P. waiver providers on improving the level of functioning;
- Exclusive of maintenance or the prevention of regression;
- Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and
- Documented with a detailed staff note which shall include:
  - The month, day, and year for the time period each note covers;
  - Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - The signature, date of signature, and title of the individual preparing the note;

(j) Physical therapy which shall ~~[be]~~:

- ~~Be~~ a physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle, joint, and functional ability tests;
- ~~Be~~ physician-ordered treatment in a specified amount and duration to assist a Michelle P. waiver recipient in obtaining the highest possible level of functioning;
- ~~Include~~ training of other Michelle P. waiver providers on improving the level of functioning;
- ~~Be~~ exclusive of maintenance or the prevention of regression;
- ~~Be~~ provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR ~~22:053~~~~[22:020]~~; and
- ~~Be~~ documented with a detailed monthly summary note which ~~shall~~ include:
  - The month, day, and year for the time period each note covers;
  - Progression ~~or lack of progression~~~~[regression, and maintenance]~~ toward outcomes identified in the plan of care; and
  - The signature, date of signature, and title of the individual preparing the note;

(k) Speech therapy which shall ~~[be]~~:

- ~~Be~~ a physician-ordered evaluation of a Michelle P. waiver recipient with a speech or language disorder;
- ~~Be~~ a physician-ordered habilitative service in a specified amount and duration to assist a Michelle P. waiver recipient with a speech and language disability in obtaining the highest possible level of functioning;
- ~~Include~~ training of other Michelle P. waiver providers on improving the level of functioning;
- ~~Be~~ provided by a speech-language pathologist; and
- ~~Be~~ documented with a detailed monthly summary note which ~~shall~~ include:
  - The month, day, and year for the time period each note covers;
  - Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - The signature, date of signature, and title of the individual preparing the note;

(l) An adult day training service which shall:

- Support the Michelle P. waiver recipient in daily, meaningful routines in the community;
- Stress training in:
  - The activities of daily living;
  - Self-advocacy;
  - Adaptive and social skills; and
  - Vocational skills;
- Be provided in a community setting which may:
  - Be a fixed location; or

b. Occur in public venues;  
 4. Not be diversional in nature;  
 5. If provided on site:  
 a. Include facility-based services provided on a regularly-scheduled basis;  
 b. Lead to the acquisition of skills and abilities to prepare the recipient for work or community participation; or  
 c. Prepare the recipient for transition from school to work or adult support services;  
 6. If provided off site:  
 a. ~~Shall:~~  
 (i) Include services provided in a variety of community settings;  
 b. ~~(iii)~~ Provide access to community-based activities that cannot be provided by natural or other unpaid supports;  
 c. ~~(iii)~~ Be designed to result in increased ability to access community resources without paid supports; ~~and~~  
 d. ~~(iv)~~ Provide the opportunity for the recipient to be involved with other members of the general population; and  
 e. ~~b-May~~ Be provided as:  
 (i) An enclave or group approach to training in which recipients work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;  
 (ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or  
 (iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;  
 7. Ensure that any recipient performing productive work that benefits the organization, be paid commensurate with compensation to members of the general work force doing similar work;  
 8. Require that an adult day training service [a Michelle P. waiver] provider conduct, at least annually, an orientation informing the recipient of supported employment and other competitive opportunities in the community;  
 9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver provider;  
 10.a. Be provided to recipients age twenty-two (22) or older; or  
 b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services; and  
 11. Be documented with:  
 a. A detailed monthly summary note which shall include:  
 (i) The month, day, and year for the time period each note covers;  
 (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and  
 (iii) The signature, date of signature, and title of the individual preparing the note; and  
 b. A time and attendance record which shall include:  
 (i) The date of service;  
 (ii) The beginning and ending time of the service;  
 (iii) The location of the service; and  
 (iv) The signature, date of signature, and title of the individual providing the service;  
 (m) A supported employment service which shall:  
 1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;  
 2. Include attending to a recipient's personal care needs;  
 3. Be provided in a variety of settings;  
 4. Be provided on a one-to-one basis;  
 5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the Michelle P. waiver recipient's file;  
 6. Exclude work performed directly for the supported employment provider;  
 7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;  
 8. Be documented by:  
 a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;  
 (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and  
 (iii) The signature, date of signature, and title of the individual preparing the note; and  
 b. A time and attendance record which shall include:  
 (i) The date of service;  
 (ii) The beginning and ending time of the service;  
 (iii) The location of the service; and  
 (iv) The signature, date of signature, and title of the individual providing the service;  
 (n) A behavioral support service which shall:  
 1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;  
 2. Be provided to assist the Michelle P. waiver recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;  
 3. Include a functional assessment of the Michelle P. waiver recipient's behavior which shall include:  
 a. An analysis of the potential communicative intent of the behavior;  
 b. The history of reinforcement for the behavior;  
 c. Critical variables that preceded the behavior;  
 d. Effects of different situations on the behavior; and  
 e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;  
 4. Include the development of a behavioral support plan which shall:  
 a. Be developed by the behavioral specialist;  
 b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;  
 c. Be revised as necessary;  
 d. Define the techniques and procedures used;  
 e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;  
 f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;  
 g. Reflect the use of positive approaches; and  
 h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;  
 5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;  
 6. Include the monitoring of a Michelle P. recipient's progress which shall be accomplished by:  
 a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and  
 b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;  
 7. Provide for the design, implementation, and evaluation of systematic environmental modifications;  
 8. Be provided by a behavior support specialist; and  
 9. Be documented by a detailed staff note which shall include:  
 a. The date of service;  
 b. The beginning and ending time; and  
 c. The signature, date of signature, and title of the behavioral specialist;  
 (o) An ADHC service which shall:  
 1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of age;  
 2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:  
 a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;  
 b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

- c. Snacks;
- d. Supervision by an RN;
- e. Age and diagnosis appropriate daily activities; and
- f. Routine services that meet the daily personal and health care needs of a Michelle P. waiver recipient, including:
  - (i) Monitoring of vital signs;
  - (ii) Assistance with activities of daily living; and
  - (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a Michelle P. waiver recipient;
- 3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;
- 4. Include respite care services pursuant to paragraph (g) of this subsection;
- 5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center which may include:
  - a. A physician;
  - b. A physician assistant;
  - c. An ARNP;
  - d. An RN;
  - e. An LPN;
  - f. An activities director;
  - g. A physical therapist;
  - h. A physical therapist assistant;
  - i. An occupational therapist;
  - j. An occupational therapist assistant;
  - k. A speech pathologist;
  - l. A social worker;
  - m. A nutritionist;
  - n. A health aide;
  - o. An LPCC;
  - p. An LMFT;
  - q. A certified psychologist with autonomous functioning; or
  - r. A licensed psychological practitioner; and
- 6. Be provided pursuant to a plan of treatment. The plan of treatment shall:
  - a. Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient;
  - b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and
  - c. Be developed annually from information on the MAP 351 and revised as needed; and
- (p) Community living supports which shall:
  - 1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;
  - 2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:
    - a. Routine household tasks and maintenance;
    - b. Activities of daily living;
    - c. Personal hygiene;
    - d. Shopping;
    - e. Money management;
    - f. Medication management;
    - g. Socialization;
    - h. Relationship building;
    - i. Leisure choices;
    - j. Participation in community activities;
    - k. Therapeutic goals; or
    - l. Nonmedical care not requiring nurse or physician intervention;
  - 3. Not replace other work or day activities;
  - 4. Be provided on a one-on-one basis~~(one-on-one basis)~~;
  - 5. Not be provided at an adult day-training or children's day-habilitation site;
  - 6. Be documented by:
    - a. A time and attendance record which shall include:
      - (i) The date of the service;

- (ii) The beginning and ending time of the service; and
- (iii) The signature, date of signature and title of the individual providing the service; and
- b. A detailed monthly summary note which shall include:
  - (i) The month, day, and year for the time period each note covers;
  - (ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and
  - (iii) The signature, date of signature, and title of the individual preparing the summary note; and
- 7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, ~~[children's day habilitation,]~~ and supported employment.
- (4) A case manager shall:**
  - (a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:**
    - 1. A QMRP;**
    - 2. A registered nurse who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;**
    - 3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;**
    - 4. A qualified social worker who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;**
    - 5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;**
    - 6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;**
    - 7. A certified psychologist who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability; or**
    - 8. A licensed psychological practitioner who has at least two (2) years of experience working with individuals with mental retardation or a developmental disability;**
  - (b) Be an RN;**
  - (c) Be an LPN;**
  - (d) Be a qualified social worker;**
  - (e) Be an LMFT;**
  - (f) Be an LPCC;**
  - (g) Be a certified psychologist; or**
  - (h) Be a licensed psychological practitioner.**

Section 8. Consumer-Directed Option. (1) Covered services and supports provided to a Michelle P. waiver recipient participating in CDO shall be nonmedical and include:

- (a) A home and community support service which shall:
  - 1. Be available only under the consumer-directed option;
  - 2. Be provided in the consumer's home or in the community;
  - 3. Be based upon therapeutic goals and not diversional in nature; [and]
  - 4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; and
  - 5. Include:
    - a. Assistance, support or training in activities including meal preparation, laundry, or routine household care of maintenance;
    - b. Activities of daily living including bathing, eating, dressing, personal hygiene, shopping, or the use of money;
    - c. Reminding, observing, or monitoring of medications;
    - d. Nonmedical care which does not require a nurse or physician intervention;
    - e. Respite; or
    - f. Socialization, relationship building, leisure choice or participation in generic community activities.
- (b) Goods and services which shall:
  - 1. Be individualized;
  - 2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;

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3. Not include experimental goods or services; and
4. Not include chemical or physical restraints;
- (c) A community day support service which shall:
  1. Be available only under the consumer-directed option;
  2. Be provided in a community setting;
  3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure, or retirement activities;
  4. Be based upon therapeutic goals and not be diversional in nature; and
  5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; or
- (d) Financial management which shall:
  1. Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;
  2. Include payroll processing associated with the individuals hired by a consumer or consumer's representative;
  3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a consumer;
  4. Be performed by an entity:
    - a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
    - b. With at least two (2) years of experience working with **individuals possessing the same or similar level of care needs as those referenced in Section 5 of this administrative regulation [the Michelle P. services target population];**
  5. Include preparing fiscal accounting and expenditure reports for:
    - a. A consumer or consumer's representative; and
    - b. The department.
- (2) To be covered, a CDO service shall be specified in a plan of care.
- (3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-CDO Michelle P waiver setting, **except that respite may be provided in excess of the cap established in Section 12(2) of this administrative regulation if:**
  - (a) Necessary per the consumer's plan of care; and**
  - (b) Approved by the department in accordance with subsection (13) of this section.**
- (4) A consumer, including a married consumer, shall choose providers and a consumer's choice shall be reflected or documented in the plan of care.
- (5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:
  - (a) Be twenty-one (21) years of age or older;
  - (b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
  - (c) Be appointed by the consumer on a MAP 2000 form.
- (6) A consumer may voluntarily terminate CDO services by completing a MAP 2000 and submitting it to the support broker.
- (7) The department shall immediately terminate a consumer from CDO services if:
  - (a) Imminent danger to the consumer's health, safety, or welfare exists;
  - (b) The consumer fails to pay patient liability;
  - (c) The recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety and welfare due to being left alone without a caregiver present; or
  - (d) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.
- (8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.
- (9) Prior to a consumer's termination from CDO services, the support broker shall:
  - (a) Notify the assessment or reassessment service provider of potential termination;
  - (b) Assist the consumer in developing a resolution and prevention plan;

- (c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;
- (d) Complete, and submit to the department, a MAP 2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and
- (e) Assist the consumer in transitioning back to traditional Michelle P. waiver services.
- (10) Upon an involuntary termination of CDO services, the department shall:
  - (a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and
  - (b) ~~[Except in a case where a consumer failed to pay patient liability.]~~ Inform the consumer of the right to appeal the department's decision in accordance with Section 13 of this administrative regulation.
- (11) A CDO provider shall:
  - (a) Be selected by the consumer;
  - (b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;
  - (c) Be eighteen (18) years of age or older;
  - (d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
  - (e) Be able to communicate effectively with the consumer, consumer representative, or family;
  - (f) Be able to understand and carry out instructions;
  - (g) Be able to keep records as required by the consumer;
  - (h) Submit to a criminal background check;
  - (i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;
  - (j) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) ~~or~~ **through** (3);
  - (k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;
  - (l) Be approved by the department;
  - (m) Maintain and submit timesheets documenting hours worked; and
  - (n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.
- (12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.
- (13)(a) The department shall establish a ~~twelve (12)~~ **six (6)** month budget for a consumer based on the consumer's plan of care.
  - (b) A consumer's ~~twelve (12)~~ **six (6)** month budget shall not exceed ~~\$40,000~~ **\$20,000** unless:
    1. The consumer's support broker requests a budget adjustment to a level higher than ~~\$40,000~~ **\$20,000**; and
    2. The department approves the adjustment.
  - (c) The department shall consider the following factors in determining whether to grant a ~~twelve (12)~~ **six (6)** month budget adjustment:
    1. If the proposed services are necessary to prevent imminent institutionalization;
    2. The cost effectiveness of the proposed services;
    3. Protection of the consumer's health, safety, and welfare; and
    4. If a significant change has occurred in the recipient's:
      - a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;
      - b. Natural support system; or
      - c. Environmental living arrangement, resulting in the recipient's relocation.
  - (d) **A consumer's twelve (12) month budget may encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the consumer's plan of care and approved by the department.**
- (14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a CDO service is expand-



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ed to a point in which expansion necessitates a twelve (12)~~six (6)~~ month budget increase, the entire service shall only be covered via traditional (non-CDO) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16)(a) **A support broker or case manager may conduct an assessment or reassessment for a CDO participant**~~[For a CDO participant, a support broker may conduct an assessment or reassessment];~~ and

(b) A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

Section 9. Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section **shall**:

(a) **[Shall]** Be an overall limit applied to all services whether CDO services, Michelle P. **waiver** services not provided via CDO, or a combination of CDO and Michelle P. **waiver** services; and

(b) Shall equal \$63,000 per year.

Section 10. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency.

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraints;

3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;

4. Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours;

b. The guardian within twenty-four (24) hours;

c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect, or exploitation;

c. Involve a medication error which requires a medical intervention; or

d. Be a death.

2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209 **or 620.030**;

c. The guardian within eight (8) hours of discovery; and

d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holi-

day, notification to the department shall occur on the following business day.

(3) Documentation with a complete written report for a death shall include:

(a) The recipient's current plan of care;

(b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;

(c) The recipient's current crisis plan;

(d) Medication administration review forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by the department **necessary to determine if a corrective action needs to be taken by the Cabinet for Health and Family Services against the provider**;

(g) A coroner's report when received; and

(h) If performed, an autopsy report when received.

(4) All medication errors shall be reported to the department on a **Michelle P. Waiver Medication Error Report**~~[monthly medication error report form]~~ by the 15th of the following month.

Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A home health provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 12. Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, **shall be**~~are~~ limited to forty (40) hours per calendar week:

(a) Homemaker;

(b) Personal care;

(c) Attendant care;

(d) Supported employment;

(e) Adult day health care;

(f) Adult day training;

(g) Community living supports;

(h) Physical therapy;

(i) Occupational therapy;

(j) Speech therapy; and

(k) Behavior supports.

(2) Respite services shall not exceed \$4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.

(4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The following rates shall be the fixed upper payment rate limits:

Service	Fixed Upper Payment Rate Limit	Unit of Service
Case Management	<b><u>\$50.00</u></b> <del>[\$200.00]</del>	<b><u>15 minutes</u></b> <del>[1 month]</del>

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Respite	\$4,000 per calendar year	15 minutes
Homemaker	\$6.50	15 minutes
Personal Care	\$7.50	15 minutes
Attendant Care	\$2.90	15 minutes
Supported Employment	\$5.54	15 minutes
Adult Day Health Care	<del>\$2.75</del> [\$2.57]	15 minutes
Adult Day Training	\$2.75	15 minutes
Community Living Supports	\$5.54	15 minutes
Physical Therapy	\$22.17	15 minutes
Occupational Therapy	\$22.17	15 minutes
Speech Therapy	\$22.17	15 minutes
Behavior Supports	\$33.25	15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year	
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)	15 minutes
Support Broker	\$265.00	One (1) month

Section 13. Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service[ICF-MR-DD] level of care or services to a Michelle P. waiver recipient or a consumer shall be in accordance with 907 KAR 1:563.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Person Centered Planning: Guiding Principles", March 2005 edition;

(b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", February 2001 edition;

(f) "MAP-95 Request for Equipment Form" June 2007 edition;

(g) "MAP 109, Plan of Care/Prior Authorization for Waiver Services", March 2007 edition;

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition;

(i) "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", March 2007 edition;

(j) "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007, edition; ~~and~~

(k) "MAP-10, Waiver Services", March 2007 edition;

**(l) The Kentucky Consumer Directed Option Employee Provider Contract, May 4, 2007 edition;**

**(m) Incident Report Form, April 2, 2007 edition; and**

**(n) Michelle P. Waiver Medication Error Report, November 19, 2008 edition.**

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

ELIZABETH A. JOHNSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 13, 2008

FILED WITH LRC: November 14, 2008 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (As Amended at ARRS, December 9, 2008)

### 921 KAR 3:020. Financial requirements.

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.8, 273.9, 273.10, 273.11, 273.12, 7 U.S.C. 2014, 2017(d), 26 U.S.C. 3507, 29 U.S.C. 2801-2931[~~29 U.S.C. 2801 et seq., 2931~~], 38 U.S.C. 1833[~~1823~~], 42 U.S.C. 601-619[~~601-699~~], 1382a(b)(4)(B)(iv), 4951-4960, 9902(2), 12501-12604, Pub.L. 110-246[~~et seq.~~]

STATUTORY AUTHORITY: KRS 194A.010, 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010 requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires the cabinet to administer the Food Stamp Program within the state. This administrative regulation establishes the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program. In addition, 7 U.S.C. 2014 allows states to exclude additional types of income and resources if these specific types of income and resources are not counted in the state's Temporary Assistance for Needy Families (TANF)[~~"TANF"~~][TANF] or Medicaid Programs.

Section 1. Financial Eligibility Requirements. (1) As established in 7 C.F.R. 273, [~~promulgated by the Food and Nutrition Service of the United States Department of Agriculture,~~] national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:

(a) Income limitations; and

(b) Resource limitations.

(2) Participation in the program shall be limited to a household that is prevented from obtaining a more nutritious diet because of its income.

(3) The income eligibility standards shall be:

(a) Derived from the federal income poverty guidelines as defined in 42 U.S.C. 9902(2) for the forty-eight (48) contiguous states; and

(b) Adjusted annually each October 1, as published in the Federal Register.

Section 2. Countable Income. All nonexcluded income shall be considered in determining eligibility, including the following:

(1) Wages earned by a household member, including wages received by a striker as defined in 921 KAR 3:035, Section 5(10);

(2) The gross income of a self-employment enterprise, including the total gain from the sale of capital goods or equipment related to the business, excluding the cost of doing business;

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state, or local governments, to the extent that ~~the allowances~~[they] are not reimbursements;

(4) Volunteers in Service to America; (VISTA) payments under 42 U.S.C. 4951 to 4960[~~shall be considered earned income~~] unless specifically excluded in accordance with 7 C.F.R. 273.9(c)(10)(iii);

(5) The earned or unearned income of an ineligible household member or nonhousehold member as described in 921 KAR 3:035, Section 5(3) and (4);

(6) Assistance payments from federal or federally-aided public assistance including:

(a) Supplemental security income or "SSI";

(b) Kentucky Transitional Assistance Program or "K-TAP" in accordance with 921 KAR 2:016;

(c) General assistance programs;

(d) Other assistance programs based on need; or

(e) Kinship care in accordance with 922 KAR 1:130;

(7) Annuities;

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- (8) Pensions;
- (9) Retirement, veteran's, or disability benefits;
- (10) Worker's or unemployment compensation;
- (11) Strike pay;
- (12) Old-age survivors or Social Security benefits;
- (13) Except as excluded in Section 3(16) of this administrative regulation, foster care payments for a child or adult;
- (14) Gross income derived from rental property, minus the cost of doing business. This income shall be considered as earned income if the household member is actively engaged in the management of the property an average of twenty (20) hours or more per week;
- (15) Wages earned by a household member that are gar-nished~~[gar-nished]~~ or diverted by an employer and paid to a third party for a household expense;
- (16) Support or alimony payments made directly to the household from a nonhousehold member. This shall include any portion of a payment returned to the household by the cabinet;
- (17) A portion of the following, that is not excludable as specified in Section 3(6) of this administrative regulation:
  - (a) Scholarship;
  - (b) Education grant;
  - (c) Fellowship;
  - (d) Deferred payment education loan;
  - (e) Veteran's educational benefit; or
  - (f) Income received from a work study program which is not administered by the U.S. Commissioner of Education or the Bureau of Indian Affairs, in accordance with 7 U.S.C. 2014;
- (18) A payment from:
  - (a) A government sponsored program;
  - (b) A royalty; or~~[and]~~
  - (c) Similar direct money payments from a source that may be construed as a gain or benefit;
- (19) Money withdrawn from a trust fund;
- (20) The amount of monthly income deemed to a sponsored alien as established in 921 KAR 3:035, Section 5(11);
- (21) The portion of means tested assistance monies:
  - (a) From a:
    - 1. Federal welfare program;
    - 2. State welfare program; or
    - 3. Local welfare program; and
  - (b) Withheld for the purpose of recouping an overpayment resulting from the household's intentional failure to comply with that program's requirements;
- (22) Earnings of an individual who is participating in an on-the-job training program under 29 U.S.C. 2801-2931~~[29 U.S.C. 2801 et seq.]~~ unless the individual is under:
  - (a) Nineteen (19) years of age; and
  - (b) The parental control of another adult member; and
- (23) An assistance payment for child care or attendant care:
  - (a) Received from an outside source; and
  - (b) Paid to one (1) household member:
    - 1. From another household member; or
    - 2. On behalf of another household member.

Section 3. Income Exclusions. The following~~[payments]~~ shall not be considered as income:

- (1) Money:
  - (a) Withheld from:
    - 1. An assistance payment;
    - 2. Earned income; or
    - 3. Another income source; and
    - (b) Voluntarily or involuntarily returned to repay a prior overpayment received from the same income source, except as established in Section 2(21) of this administrative regulation;~~[an assistance payment;~~
    - ~~(b) From earned income;~~
    - ~~(c) From another income source; or~~
    - ~~(d) Received from another income source that is voluntarily or involuntarily returned to repay a prior overpayment received from that income source, except as defined in Section 2(21) of this administrative regulation;]~~
- (2) Child support income shall be considered as follows:
  - (a) A child support payment shall be excluded if:

- 1. Received by a recipient of the K-TAP or Kinship Care Program; and
- 2. It is transferred to the Child Support Enforcement Program in the Department for Income Support~~[Division of Child Support]~~ to maintain eligibility in K-TAP or Kinship Care Program; and
- (b) A portion of child support money returned to the household receiving K-TAP or Kinship Care Program benefits by the cabinet shall not be excluded;
- (3) A gain or benefit that is not in the form of money payable directly to the household;
- (4) A money payment that is not legally obligated and otherwise payable directly to a household, but is paid to a third party for a household expense;
- (5) Income:
  - (a) Received:
    - 1. In the certification period; and
    - 2. Too infrequently or irregularly to be reasonably anticipated; and
  - (b) Not in excess of thirty (30) dollars per quarter;
- (6) Educational income including grants, loans, scholarships, and work study income except as defined Section 2(17) of this administrative regulation;~~;~~
  - (a) Including:
    - 1. A deferred payment educational loan on which repayment does not begin within sixty (60) days after receipt;
    - 2. A grant;
    - 3. A scholarship;
    - 4. A fellowship;
    - 5. A veteran's educational benefit;
    - 6. Income from a work study program administered by the U.S. Commissioner of Education or the Bureau of Indian Affairs, in accordance with 7 U.S.C. 2014; and
    - 7. A similar form of income;
  - (b) Awarded to a member of a household, as defined in 921 KAR 3:010, Section 1(24), who is enrolled in one (1) of the following recognized institutions:
    - 1. Institution of postsecondary education;
    - 2. School for a disabled person;
    - 3. Vocational education program; or
    - 4. Program providing for completion of a secondary school diploma or its equivalent;
  - (c) To the extent that it does not exceed the amount used for or made available as an allowance as determined by the:
    - 1. School;
    - 2. Institution;
    - 3. Program; or
    - 4. Grantor;
  - (d) For payment of:
    - 1. Tuition;
    - 2. Transportation;
    - 3. Miscellaneous personal expense, other than room and board;
    - 4. An origination fee for an educational loan;
    - 5. An insurance premium for an educational loan; or
    - 6. Dependent care, except the costs that exceed the amount excludable from income shall be deducted as defined in Section 5 of this administrative regulation;
  - (e) For payment of mandatory fees relating to the course of study, including the rental or purchase of:
    - 1. Equipment;
    - 2. Material;
    - 3. Books; and
    - 4. Supplies;
- (7) A loan~~], other than an educational loan on which payment is deferred;~~ from a:
  - (a) Private individual; or
  - (b) Commercial institution;
- (8) A reimbursement for a past or future expense, other than normal living expenses;
- (9) Money received and used for the care and maintenance of a third-party beneficiary who is not a household member;
- (10) The earned income of a child who is:
  - (a) A member of the household;
  - (b) An elementary or secondary school student; and

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(c) Age seventeen (17) years or younger;

(11) Money received in the form of a nonrecurring lump-sum payment;

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, the loss shall be offset against any other countable income in the household;

(13) Income specifically excluded by 7 U.S.C. 2014 from consideration as income for the purpose of determining Food Stamp Program eligibility;

(14) An energy assistance payment or allowance that is made:

(a) In accordance with any federal law, except 42 U.S.C. 601 to 619, including a utility reimbursement made by:

1. The Department of Housing and Urban Development; and
2. Rural and Economic Community and Development; or

(b) For the purpose of a one (1) time payment or allowance made as defined in a federal or state law for the costs of:

1. Weatherization;
2. Emergency repair; or
3. Replacement of:
  - a. An unsafe or inoperative furnace; or
  - b. Other heating or cooling device;

(15) A cash donation based on need received from a nonprofit charitable organization, not to exceed \$300 in a federal fiscal year quarter;

(16) A foster care payment for a foster child if the household requests that the child be excluded from the household in determining eligibility;

(17) Money received under 26 U.S.C. 3507 of the Internal Revenue code, as an advanced payment of earned income credit;

(18) Interest or dividend income, in accordance with 7 U.S.C. 2014;

(19) Additional wages received by a member of the military while deployed to a designated combat zone, in accordance with 7 U.S.C. 2014 [Pub. L. 108-447];

(20) Veteran's benefits provided to children with identified birth defects born to female Vietnam veterans, in accordance with 38 U.S.C. ~~1833~~ [~~4823~~];

(21) Income from AmeriCorps programs, except for Volunteers in Service to America, as specified in Section 2(4) of this administrative regulation, in accordance with 42 U.S.C. 12501-~~12604~~ [~~et seq.~~];

(22) Income from a Youthbuild program, unless the income is from on-the-job training, as defined in Section 2 of this administrative regulation, in accordance with 29 U.S.C. 2931; and

(23) Income associated with the fulfillment of an approved Plan for Achieving Self-Support (PASS), in accordance with 42 U.S.C. 1382a(b)(4)(B)(iv).

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to a household whose income falls at or below the applicable standards as established by the Food and Nutrition Service in 7 C.F.R. 273 that are established in this section [~~set forth below~~]:

(1) A household that contains a member who is elderly or has a disability as defined in 921 KAR 3:010, Section 1(11) or (13), shall have the member's [~~his~~] net income compared to 100 percent of the federal income poverty guidelines.

(2) A household in which a member receives or is authorized to receive cash, in-kind, or other benefits funded under TANF [~~temporary assistance to needy families, or "TANF"~~] pursuant to 42 U.S.C. 601-619 [~~42 U.S.C. 601-699~~], shall be considered categorically eligible in accordance with 921 KAR 3:030, Section 6(4).

(3) A household in which all members are recipients of SSI shall be considered categorically eligible in accordance with 921 KAR 3:030, Section 6(3).

(4) (a) Other households shall have a [~~their~~]:

1. Gross income compared to 130 percent of the federal income poverty guidelines; and

2. Net income compared to 100 percent of the federal income poverty guidelines.

(b) A household's gross income as calculated pursuant to paragraph (a) of this subsection shall be the household's total income;

1. After excluded income has been disregarded in accordance with Section 3 of this administrative regulation; and

2. Before any deductions in accordance with Section 5 of this administrative regulation have been made. [~~Other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.]~~

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A monthly standard deduction per household, based on household size, as established in 7 U.S.C. 2014, that shall be periodically adjusted by the Food and Nutrition Service to reflect a change in the cost of living for a prior period of time as determined by the Food and Nutrition Service pursuant to 7 C.F.R. 273;

(2) Twenty (20) percent of gross earned income that is reported within ten (10) days of the date that the change of income becomes known to the household;

(3) A payment:

(a) For the actual cost for the care of:

1. A child; or
2. Other dependent; and

(b) [~~Not to exceed:~~

1. ~~\$200 per month per dependent child under age two (2); and~~
2. ~~\$175 per month for each other dependent; and~~

(c) Necessary for a household member to:

1. Seek, accept, or continue employment;
2. Attend training; or
3. Pursue education preparatory to employment;

(4) [~~The cabinet shall use~~] A homeless standard allowance of a shelter expense for a household in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses;

(5) An allowable medical expense in excess of thirty-five (35) dollars per month incurred by a household member who meets the definition of being elderly or having a disability as defined in 921 KAR 3:010, Section 1(11) and (13):

(a) Including:

1. Medical and dental care;
2. Hospitalization or outpatient treatment and nursing care;
3. Medication and medical supplies;
4. A health insurance premium;
5. A hospitalization insurance premium;
6. Dentures, a hearing aid, eyeglasses, prosthetics; or
7. Similar medical expense; and

(b) Excluding special diet cost;

(6) Actual child support payment made by a household member shall be allowed as a deduction if:

(a) The household member is legally obligated to pay child support; and

(b) Verification is provided showing a payment is currently being made.

Section 6. Monthly Shelter Cost Deduction. (1) The monthly shelter cost deduction shall be that amount in excess of fifty (50) percent of the household's income after allowable deductions have been made.

(2) The shelter deduction shall not exceed the current shelter maximum, except that a household shall not be subject to the maximum if a member is:

- (a) Elderly; or
- (b) Disabled.

(3) The excess shelter maximum shall be adjusted periodically by the Food and Nutrition Service to reflect change in the cost of living.

(4) Allowable monthly shelter expense shall include the following:

(a) Continuing charge for the shelter occupied by the household including:

1. Rent;
2. Mortgage;
3. Payment on mobile home loan;

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4. Condominium and association fees;
5. Interest on a payment; and
6. Similar charge leading to ownership of the shelter;
- (b) Property tax;
- (c) State and local assessment;
- (d) Insurance on the structure itself;
- (e) The cost of:
  1. Heating and cooking fuel;
  2. Cooling;
  3. Electricity;
  4. Water and sewage;
  5. Garbage and trash collection fee;
  6. Telephone standard deduction; and
  7. A fee charged by a utility provider for the initial installation of the utility;
- (f) The shelter cost for the home if:
  1. Temporarily unoccupied by the household because of:
    - a. Employment or training away from home;
    - b. Illness; or
    - c. Abandonment caused by a natural disaster or casualty loss;
  2. The current occupant is not claiming shelter cost for food stamp ~~purposes~~[purpose]; and
  3. The home is not leased or rented during the absence of the household; ~~and~~[or]
- (g) A charge for the repair of the home if substantially damaged or destroyed by fire, flood, or other natural disaster, except to the extent the cost is reimbursed by:
  1. A private or public relief agency;
  2. Insurance; or
  3. A similar source.
- (5) The standard utility allowance shall be used to calculate shelter cost for a household:
  - (a) Receiving Low Income Home Energy Assistance Program benefits; or
  - (b) Incurring cost, separate from its rent or mortgage payment, for:
    1. Heating; or
    2. Cooling (by air conditioning unit only).
- (6) The standard utility allowance shall be adjusted periodically.
- (7) If the household is not entitled to the utility standard or homeless standard allowance, it shall be given the basic utility allowance in accordance with 7 U.S.C. 2014, if the household is billed for two (2) of the following:
  - (a) Electricity (nonheating and noncooling);
  - (b) Water or sewage;
  - (c) Garbage or trash;
  - (d) Cooking fuel; or
  - (e) Telephone service.
- (8) The basic utility allowance shall be adjusted annually.
- (9) A household whose only expense is for telephone service shall be given a telephone standard.
- (10) A household not entitled to a standard specified in subsection (7) or (9) of this section may use actual utility expense to calculate shelter deduction.

Section 7. Resources. (1) Uniform national resource standards of eligibility shall be utilized pursuant to 7 C.F.R. 273.8.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 8 of this administrative regulation exceed:

- (a) ~~\$3,000~~[\$3000] for a household member:
  1. With a disability as defined in 921 KAR 3:010, Section 1(11); or
  2. Sixty (60) years or older; or
- (b) ~~\$2,000~~[\$2000] for any other household.
- (3) A household that is categorically eligible in accordance with 921 KAR 3:030, Section 6 shall meet the food stamp resource requirement.

Section 8. Exempt Resources. The following resources shall not be considered in determining eligibility:

- (1) All real estate, in accordance with 7 U.S.C. 2014;
- (2) Household goods;

- (3) Personal effects;
- (4) A burial plot;
- (5) The cash value of life insurance policies;
- (6) In accordance with 7 U.S.C. 2014;
  - (a) A tax-preferred retirement account;
  - (b) A prepaid burial account;
  - (c) A licensed or unlicensed vehicle;
  - (d) A recreational vehicle;
  - (e) A resource deemed to an alien from a sponsor or spouse of a sponsor;
  - (f) Principal and accrued interest of an irrevocable trust during a period of unavailability;
  - (g) A tax-preferred educational account; and
  - (h) Another resource that is excluded for food stamp purposes;
- (7) ~~Funds in an individual retirement account, pension, retirement, or deferred compensation during the period of unavailability;~~
- (7) ~~A prepaid burial account, in accordance with 7 U.S.C. 2014;~~
- (8) ~~In accordance with 7 U.S.C. 2014 a licensed or unlicensed vehicle;~~
- (9) ~~A recreational vehicle, in accordance with 7 U.S.C. 2014;~~
- (10) ~~A resource deemed to an alien from a sponsor or spouse of a sponsor, in accordance with 7 U.S.C. 2014;~~
- (11) ~~Principal and accrued interest of an irrevocable trust during a period of unavailability, in accordance with 7 U.S.C. 2014;~~
- (12) ~~A governmental payment that is designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction and, if funds are not used as intended;~~
- (8) ~~(13) A resource, of which the cash value is not accessible to the household;~~
- (9) ~~(14) A resource that has been prorated as income;~~
- (10) ~~(15) A resource that is excluded for food stamp purposes in accordance with 7 U.S.C. 2014~~
- (16) ~~Income that is withheld by the employer to pay a certain expense directly to a third party as a vendor payment, to the extent that the remainder of the withheld income is not accessible to the household at the end of the year; and~~
- (11) ~~(17) The earned income tax credit income received by a member of the household for a period of twelve (12) months from receipt if the member was participating in the Food Stamp Program:~~
  - (a) At the time the credit was received; and
  - (b) Continuously during the twelve (12) month period of exclusion.

Section 9. Transfer of Resources. A household that has transferred a resource knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 10. Failure to Comply with Other Programs. (1) Except as provided in subsection (2) of this section, if the benefits of a household are reduced under a federal, state, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of the reduction, the food stamp allotment of the household shall be reduced by twenty-five (25) percent.

(2) If the benefits of a household are reduced as defined in a federal, state, or local law relating to a means-tested public assistance program for the failure of a household member to perform a work requirement, the individual shall be subject to the disqualification procedure as defined in 921 KAR 3:042, Section 7.

PATRICIA R. WILSON, Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 24, 2008

FILED WITH LRC: September 29, 2008 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

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

### Department for Community Based Services Division of Family Support (As Amended at ARRS, December 9, 2008)

#### 921 KAR 3:045. Issuance procedures.

RELATES TO: 7 C.F.R. 274.2, 274.3, 274.4, 274.6, Pub.L. 110-246

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 274.12

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Food Stamp Program within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The cabinet shall follow procedures established in 7 C.F.R. 274.12 in the operation of an electronic benefit transfer or "EBT" system. This administrative regulation establishes issuance procedures used by the cabinet in the administration of the Food Stamp Program.

Section 1. Basic Issuance Requirements. (1) The cabinet shall be responsible for the timely and accurate issuance of benefits to eligible households.

(2) In issuing benefits, the cabinet shall insure that:

- (a) Only certified households receive benefits;
- (b) Program benefits shall be[are] distributed in the correct amounts; and

(c) Benefit issuance and reconciliation activities shall be[are] properly conducted and accurately reported to the Food and Nutrition Service.

(3) The cabinet shall advise the recipient at time of application that:

(a) After twelve (12)[nine-(9)] months of EBT account inactivity, unused benefits shall be expunged in accordance with Section 6 of this administrative regulation; and

(b) Expunged benefits shall be:

1. Applied for benefit overpayments in accordance with 921 KAR 3:050; or

2. Returned to the Food and Nutrition Service of the U.S. Department of Agriculture.

(4) The cabinet shall maintain issuance records for a period of three (3) years from the month of origin.

Section 2. Benefit Delivery. (1) Benefits shall be provided to an eligible household through an EBT system.

(2) An EBT card and instructions for use[a-PIN] shall be mailed:

- (a) Directly to each eligible household; or
- (b) To the local office for pick up, if requested by the household.

Section 3. Benefit Availability. (1) Benefits shall be available to a household the day after an approval is processed, if the case is a:

- (a) New application;
- (b) Reapplication; or
- (c) Recertification that[, which] is:
  - 1. Initiated after the 15th day of the month; and
  - 2. Approved during the benefit month.

(2) An ongoing case shall have benefits credited to the EBT account and available to the household within the first ten (10) days of the benefit month.

Section 4. EBT Card Replacement. (1) The cabinet shall provide a replacement EBT card to a household within five (5) days, if the EBT card is reported:

- (a) Lost;
- (b) Stolen; or
- (c) Damaged.

(2) An EBT card shall be deactivated if[when] a household reports the need for card replacement.

Section 5. Benefit Replacement. (1) After the household receives an EBT card, if the EBT card is lost or stolen and the EBT account is reduced, the cabinet shall not provide replacement benefits.

(2) If food purchased with food stamp benefits is destroyed in a household misfortune, the cabinet shall provide replacement benefits if:

- (a) The loss is reported:
  - 1. Orally or in writing; and
  - 2. Within ten (10) days of the household misfortune; and
- (b) A household member or authorized representative signs a statement attesting to the loss.

(3) If the household is eligible for replacement benefits, the replacement shall equal the:

(a) Amount of the loss to the household, not to exceed the maximum of one (1) month's benefits for the household requesting replacement; or

(b) Full value of the benefits, if the replacement includes restored benefits.

(4) The cabinet shall not provide a replacement due to a household misfortune if:

- (a) A disaster declaration has been issued by FNS; and
- (b) The household is eligible for disaster food stamp benefits.

(5) There shall not be a[is no] limit on the number of benefit replacements for food:

- (a) Purchased with food stamp benefits; and
- (b) Destroyed in a household misfortune.

(6) If available documentation indicates that a household's request for benefit replacement appears fraudulent, the cabinet shall:

- (a) Deny the replacement; or
- (b) Delay the replacement; and
- (c) Inform the household:

1. Of its right to a fair hearing to contest the denial or delay of a replacement; and

2. That a replacement shall not be made while the denial or delay is being appealed.

Section 6. Account Inactivity. (1) If an EBT account has not been debited in twelve (12)[nine-(9)] consecutive months, the cabinet shall:

(a) Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is twelve (12)[nine-(9)] months in the past; and

(b) Notify the household in writing:

1. That the household's EBT account has not been debited in the last nine twelve (12)[nine-(9)]; and

2. Of the amount of EBT benefits that have been expunged.

(2) If a recipient debits the EBT account, the expungement process shall cease.

(3) Expunged benefits shall not be retrieved.

~~[(4) An EBT card shall be deactivated if, within a ten (10) month period, the EBT account has not been:~~

~~(a) Credited; or~~

~~(b) Debited.~~

~~(5) An EBT account record is removed if, within a twelve (12) month period, the EBT account has not been:~~

~~(a) Credited; or~~

~~(b) Debited.]~~

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: September 24, 2008

FILED WITH LRC: September 29, 2008 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 Community Based Services  
Division of Protection and Permanency  
(As Amended at ARRS, December 9, 2008)

**922 KAR 1:060. Federal Title IV-E adoption assistance.**

RELATES TO: KRS 199.500(1), 199.502, 199.555, 199.557, Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.557(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of the federal Title IV-E adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions. (1) "Adoption assistance agreement" is defined by 42 U.S.C. 675(3).

(2) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.

(3) "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(4) "Nonrecurring adoption expenses" is defined by 42 U.S.C. 673(a)(6).

(5) "Relative" means the father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, step-sister, uncle, aunt, first cousin, nephew, niece, great grandmother, great grandfather, great aunt, or great uncle of the child.

Section 2. Adoption Assistance Eligibility Criteria. (1) A child shall be determined by the cabinet as a special needs child in accordance with 42 U.S.C. 673(c), if:

(a) The child is available for adoption in accordance with:

1. KRS 199.500(1);
2. KRS 199.502; or
3. KRS Chapter 625;

(b) The child has a specific factor or condition described by KRS 199.555(1) that makes the child difficult to place for adoption without adoption assistance; and

(c) Effort has been made to place the child with an appropriate adoptive parent without providing adoption assistance.

(2) If the child has a strong emotional tie with the prospective adoptive parent while in the care of the prospective adoptive parent as a foster child an exception to subsection (1)(c) of this section shall be made.

(3) A special needs child shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 ~~when[at the time]~~ the adoption proceedings are initiated including:

1. Eligibility for Aid to Families with Dependent Children as the program was effective on July 16, 1996, ~~when[at the time]~~ the child was removed from the home of a relative;

2. Eligible for Supplemental Security Income; or

3. Status as a child:

a. Born to a minor parent who is receiving Title IV-E foster care maintenance; and

b. Who has received Title IV-E foster care maintenance; and

(b) Not have a parent with custody or legal claim to the child.

(4) If an adoption assistance agreement is terminated in accordance with Section 7 of this administrative regulation, a child previously eligible for federal Title IV-E adoption assistance shall be treated as having the same financial circumstances at the time of the child's original adoption.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

- (1) 922 KAR 1:350; or
- (2) 922 KAR 1:310.

Section 4. Adoption Placement Agreement. (1) Prior to placing a child with a prospective adoptive parent, the prospective adoptive parent and a cabinet representative shall review and sign the adoption placement agreement.

(2) The adoption placement agreement shall advise the prospective adoptive parent of the:

- (a) Special needs of the child;
- (b) Cabinet's expectations; and
- (c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. (1) At the time of or prior to finalization of the adoption, an adoptive parent and the cabinet shall negotiate and sign an adoption assistance agreement which shall:

(a) Be in effect in accordance with 42 U.S.C. 675(3) and 45 C.F.R. 1356.40(b);

(b) Determine the nature and amount of the adoption subsidy; and

(c) Remain in effect until terminated, even if the adoptive parent moves out of the Commonwealth of Kentucky.

(2) If an adoption is finalized, the cabinet shall pay nonrecurring adoption expenses incurred by an adoptive parent during the adoption of a special needs child pursuant to 45 C.F.R. 1356.41.

(3) If a child is eligible for adoption assistance under 42 U.S.C. 673(a)(2)(A)(i)(bb) ~~(a)(2)(A)(i)(HH)~~, the requirement of Section 4(1) of this administrative regulation shall be waived.

(4) An adoption assistance payment shall begin on the date that the adoption assistance agreement is signed by the adoptive parent.

(5) The amount of federal Title IV-E adoption assistance shall not exceed the amount that would be paid for foster care maintenance for the same child, in accordance with 42 U.S.C. 673(a)(3), including medically-fragile, specialized medically-fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services. A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance to exceed a care plus resource home per diem reimbursement established by the Department for Community Based Services.

Section 6. Federal Title IV-E Adoption Assistance. (1) Unless a circumstance in accordance with subsection (2) of this section is met, federal Title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

(a) Eighteen (18); or

(b) Twenty-one (21), if the child is determined to have a disability in accordance with subsection (2) of this section.

(2) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382c(a)(3) by either the:

1. Social Security Administration; or
2. Medical review team of the cabinet.

(b) The factors to be considered by the medical review team in making a child's disability determination shall include:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and

2. Competent medical testimony relevant to whether:

a. A physical or mental disability, illness, or impairment exists; and

b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

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(c) Other factors to be considered in making a determination shall include the child's:

1. Age;
2. Employment history;
3. Educational background; and
4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the cabinet and the:

1. Child, if the child is age eighteen (18) or older; or
2. Adoptive parent, if the child is under age eighteen (18).

(3) Federal Title IV-E adoption assistance may include:

- (a) Nonrecurring adoption expenses not to exceed \$1,000 incurred in the adoption of a special needs child; and
- (b) An adoption subsidy.

Section 7. Termination of Adoption Assistance Payments. In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance payments shall be terminated if:

- (1) The adoptive parent requests;
- (2) The child reaches age:

1. Eighteen (18); or

2. Twenty-one (21) if the child is determined to have a disability in accordance with Section ~~6(2)~~~~5(2)~~ of this administrative regulation;

(3) The cabinet determines that the:

1. Adoptive parent is no longer legally responsible for the support of the child; or
2. Child is no longer receiving support from the adoptive parent; or

(4) No adoptive parent who signed the adoption assistance agreement remains living.

Section 8. Adoption Assistance Renegotiation. (1) Renegotiation of an adoption assistance agreement may be requested by the adoptive parent before or after the adoption is finalized in accordance with 42 U.S.C. 673.

(2) The renegotiated amount of federal Title IV-E adoption assistance payments shall be agreed upon by the:

- (a) Adoptive parent; and
- (b) Cabinet.

(3) If the adoption assistance payment is renegotiated in accordance with subsection (1) and (2) of this section, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

(4) Federal Title IV-E adoption assistance payments shall not be changed by a move of the adoptive parents out of the state or country.

Section 9. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 10. Notice of Change. (1) Cabinet staff shall provide notice of termination of adoption assistance payments:

- (a) Ten (10) calendar days in advance; and
- (b) In accordance with 922 KAR 1:320, Section 6.

(2) In accordance with 42 U.S.C. 673, an adoptive parent shall notify the cabinet of any change in circumstance that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment.

Section 11. Extraordinary Medical Expenses. In accordance with KRS 199.555(6), an adoptive child shall be eligible for assistance with extraordinary medical expenses.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 9, 2008

FILED WITH LRC: October 10, 2008 at noon

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 Community Based Services Division of Protection and Permanency (As Amended at ARRS, December 9, 2008)

#### 922 KAR 1:100. Public agency adoptions.

RELATES TO: KRS 194A.060(1), 199.011(4),(9), 199.430(3), 199.520, 199.525, 199.565, 199.570, 199.572, 199.575, 202B.010(12), 600.020(26), (47),(56), 605.090, 615.030, ~~620.050~~, 620.360, ~~620.050~~, 625.045, 625.108, ~~Chapter 45~~, Chapter 625, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, ~~670-679b~~, ~~1996~~, ~~1996b~~~~679B~~, 1966, ~~1966b~~ 199.470-199.590, 209.020, 508.100, 508.110, 508.120, 510.040-510.140, 510.150, 529.020-529.050, 530.020, 530.064, 531.300-531.370, 600.020(1)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) ~~requires~~~~provides that~~ the Secretary of the Cabinet for Health and Family Services ~~to~~~~shall~~ establish policies and operate programs to protect, develop and maintain the welfare of the citizens of the Commonwealth. KRS 199.472 ~~requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet~~~~provides that the cabinet shall establish criteria for the adoption of children~~. This administrative regulation establishes the procedures for public agency adoptions.

Section 1. Definitions. (1) "Approved adoptive parent" means a family approved in accordance with:

- (a) 922 KAR 1:310;
- (b) 922 KAR 1:350; or
- (c) Section 6 of this administrative regulation.

(2) "Foster family home" is defined by KRS 199.011(9) and 600.020(26).

(3) "Home study" means an evaluation conducted in accordance with the requirements of the state where the home is located, to determine the preparation and suitability of a proposed adoptive parent, including the home environment, to receive a child for the purpose of adoption.

(4) "Open adoption" means an agreement between an adoptive parent and an adopted child's biological or legal parent regarding communication or contact with the child.

(5) "Pre-adoptive placement" means a home, approved by the cabinet, where a child legally free for adoption is placed prior to adoption finalization.

(6) "Pre-placement conference" means a meeting conducted by cabinet staff with a prospective adoptive parent that fulfills requirements specified in Section ~~4~~~~4(3)~~ of this administrative regulation.

(7) "Prospective adoptive parent" means an individual who has applied with a Kentucky or an out-of-state public or licensed private child welfare agency to be approved as an adoptive parent.

(8) "Qualified mental health professional" or "QMHP" is defined by KRS 600.020(47).

(9) "Qualified mental retardation professional" or "QMRP" is defined by KRS 202B.010(12).

(10) "Social service worker":

(a) Is defined by KRS 600.020(56); or

(b) Means a social or human service worker with an out-of-state public or licensed private child welfare agency who meets the requirements of that state to conduct a home study.

(11) "Special Needs Adoption Program" or "SNAP" means a program for the recruitment of an adoptive family by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified within thirty (30) days following the termination of parental rights, in accordance with KRS Chapter 625. "Adoptive home study" means a study conducted by a social worker to document the preparation and training received by an



approved adoptive family.

(2) "Administrative review" means an independent study or assessment by cabinet staff in which a recommendation may be made regarding the status of a case at least every six (6) months.

(3) "Cabinet" means Cabinet for Health and Family Services.

(4) "Concurrent planning" means the cabinet may simultaneously plan for reunification of a child with the birth family and permanent removal of the child if the prognosis for reunification is poor.

(5) "Concurrent planning family" means a foster family specifically trained and approved by the cabinet to provide concurrent planning placement services.

(6) "Interstate Compact on the Placement of Children (ICPC)" means the legal framework pursuant to KRS 615.030 for the placement of a child out of state.

(7) "Preplacement conference" means a meeting conducted by cabinet staff to:

(a) Provide an approved adoptive family with information regarding a child that has been referred to the family for adoptive placement;

(b) Assist the family in reaching a decision regarding acceptance of placement; and

(c) Determine the method of presenting the family to the child.

(8) "Special Needs Adoption Program (SNAP)" means recruitment of an adoptive family by cabinet staff for a child for whom an adoptive placement has not been identified within one (1) month following termination of parental rights.

(9) "Statement of After-placement Services" means an agreement for after-placement supervision for a child placed with an out-of-state family whose agency is a licensed private adoption agency.]

Section 2. Preparation of the Child for Adoptive Placement. (1) A child prepared for adoptive placement by cabinet staff shall receive information[clarification] regarding the:

(a) Relationship to the biological or legal[birth] parent;

(b) Entitlement to a parent;

(c) If applicable, relationship with the foster family home[Foster parent relationship];

(d) Reason [for which] the foster placement may not become the adoptive placement;

(e) Role of the social[family] service worker and the child in the placement planning process;

(f) Meaning of adoption;

(g) Process of recruitment of a parent[family] and how the child may be involved;

(h) Impending placement;

(i) Visitation process;

(j) Placement decision; and

(k) Cabinet staff responsible for the placement decision.

(2) Cabinet staff shall:

(a) Request the biological or legal parent to either consent or refuse to consent to the inspection of the adoption records by the adult adopted person when the child reaches twenty-one (21) years of age; and

(b) File with the circuit or family court in the county where the adoption was finalized the consent or refusal to consent to the inspection of the adoption records by the adult adopted person.

(3) If a child's permanency goal includes adoption and reunification with a sibling separated during foster care, the cabinet shall plan [adoption plan includes reunification with a sibling separated in foster care, planning] for the reunion and coordinate[coordination of] increased visitation between siblings [shall occur before termination of parental rights].

(4)[(3)] If cabinet staff agree by consensus during a planning conference, a sibling may be separated from another sibling in adoption upon consideration of:

(a) If age appropriate, each sibling's understanding of the facts of the relationship, [his] feelings, wishes, and ideas regarding options for placement;

(b) The perception of the relationship of each child with the [foster parent's or child placement professional's perceptions of each child's relationship with his] sibling; and

(c) The recommendation of a:

1. QMHP; or

2. If applicable, a QMRP.

(5) A QMHP, QMRP, relative, social service worker, nonadoptive foster parent, or another individual approved by cabinet staff[therapists and psychologists working with each child].

(4) A mental health counselor, birth relative, family service worker, nonadopting foster parent, or other appropriate person] may assist with preparing the child for adoption.

(6) If the child's goal is changed to adoption, a child in the custody of the cabinet may be placed with an approved adoptive parent prior to the termination of parental rights to the child.

(7) If a prospective adoptive parent[(5) A foster child may be placed in a home approved for adoption prior to termination of parental rights when the child's goal has been changed to adoption:

(6) If an approved family] has not been identified for a child after the child's permanency goal has been changed to adoption in accordance with 922 KAR 1:140, the cabinet:

(a) Shall comply with the Swift adoption procedures in accordance with KRS 199.565 to meet and discuss recruitment of a prospective adoptive parent;

(b) May invite an individual specified in subsection (5) of this section to a meeting in which the child's permanency plan is discussed; and

(c) Shall register the child with SNAP in accordance with Section 6(1) of this administrative regulation.[within one (1) month after the child is freed for adoption, cabinet staff shall register a waiting child with SNAP for recruitment of an adoptive family.]

Section 3. Selection of an[the] Adoptive Family. (1) [Emphasis for adoptive placement in the best interest of the child shall be to expedite the adoptive placement.

(2)] Priority consideration for an adoptive placement shall be given to [the]:

(a) A[Existing] relative; or

(b) The current foster family home[parent].

(2) The process of recruiting a prospective adoptive parent shall begin[begin] if:[(3) A final decision to pursue relative or foster adoption shall be made no later than five (5) days from the:]

(a) Parental rights of the child are terminated;[Entry of the final order for termination of parental rights; or]

(b) A relative has not made a commitment to adopt the child;

(c) The child's foster family home has not made a commitment to adopt through a statement of intent;

(d) Both biological or legal parents of the child are deceased, and designated cabinet staff have been granted custody through the court; or

(e) The child's pre-adoptive placement is disrupted.

(3) Prior to placement, cabinet staff shall consider the prospective adoptive parent's acceptance of the child's behavior and characteristics.

(4) Unless an exception has been approved as described in 922 KAR 1:350, Section 2(2), or by the completion of the DPP-112C, Adoption Placement Exception Request, the following requirements shall apply to a prospective adoptive parent:

(a) No more than five (5) children, including prospective adoptive parent's own children, shall live in the prospective adoptive parent's home; and

(b) No more than two (2) children under age two (2), including the prospective adoptive parent's own children, shall live in the prospective adoptive parent's home.

(5) The cabinet shall:

(a) Review and obtain the prospective adoptive parent's signature on the DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet; and

(b) Inform the prospective adoptive parent of:

1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b); and

2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:

a. Health, background, and placement history;

b. Behavior, including behaviors in accordance with KRS 605.090(1); and

c. Personal characteristics [Termination of parental rights hearing-  
ing-

(4) If the existing relative or foster parent shall not be pursued as an adoptive placement, the cabinet shall pursue adoptive placement according to the needs of the child with:

- (a) A concurrent planning family; or
- (b) An approved adoptive family.

(5) Acceptance by an approved family of a referral for adoptive placement shall result in a preplacement conference].

Section 4. Preparation of the Prospective Adoptive Parent [Potential Adoptive Resource]. (1) [The prospective adoptive family shall have completed preparation for placement of a child for whom the cabinet has received wardship pursuant to 922 KAR 1:350 and be approved as a family resource home.

(2) Cabinet staff shall conduct [schedule] a preplacement conference for a child available [freed] for adoption with the child's:

- (a) Foster parent;
- (b) Prospective adoptive parent;
- (c) If applicable, a QMHP or QMRP [therapist]; and
- (d) If applicable, social service worker from the cabinet [social worker from the licensed private child care] or child-placing agency where the child is placed.

(2) During the pre-placement conference, cabinet staff shall:

(a) Discuss the information provided in accordance with Section 3(5)(b) of this administrative regulation with the approved adoptive parent;

(b) Assist the approved adoptive parent in reaching a decision regarding acceptance of placement;

(c) Determine the method of presenting the approved adoptive parent to the child; and

(d) Discuss with the prospective adoptive parent acceptance of the child's plan for visitation and placement.

[(3) During the preplacement conference, cabinet staff shall discuss with the prospective adoptive parent acceptance of the:

- (a) Referral;
- (b) Health, background, and placement history of the child; and
- (c) Plan for visitation and placement.]

Section 5. Adoptive Placement. (1) Planned visitation between a child older than one (1) month and a prospective adoptive parent [family] shall occur at least two (2) times prior to placement.

(2) After parental rights to the child are terminated, final placement with a prospective adoptive parent [an adoptive family] shall occur as quickly as possible upon concurrence of [the]:

- (a) [Concurrence among] Cabinet staff;
- (b) The prospective adoptive parent; and
- (c) The child, to the extent the child's age and maturity permit the child's participation.], family and the child that the family and child are ready; and

(b) Completion of the Adoptive Placement Agreement.]

(3) Adoption assistance shall be provided in accordance with 922 KAR 1:050 or 922 KAR 1:060. [If a foster home or concurrent planning family placement becomes an adoptive family placement, a foster care payment shall cease upon completion of the Adoptive Placement Agreement.

(4) Adoption assistance shall be explored pursuant to 922 KAR 1:050.]

Section 6. Out-of-State Adoptive Placement. (1) If a prospective adoptive parent has not been identified by the time the child becomes available for adoption, cabinet staff shall:

- (a) Consider an out-of-state placement; and
- (b) Refer the child to SNAP if:

1. Termination of parental rights has been granted; and

2. No adoptive placement has been identified within thirty (30) days following the termination of parental rights. [If an approved family is not identified within six (6) months after the child is freed for adoption, SNAP personnel shall:

- (a) Refer the child to a national adoption exchange in search of a family; or
- (b) Consider placement through an out-of-state agency.]

(2) Placement of a Kentucky child with an out-of-state prospective adoptive parent [family] may occur if:

(a) The prospective adoptive parent [family] is seeking a child through:

1. An out-of-state [Through their state's] public child welfare agency; or

2. A [With a] licensed private child welfare [child-placing adoption] agency; and

(b) A [An adoptive] home study [pursuant to subsection (6) of this section] has been completed or updated within one (1) year by the out-of-state public child welfare agency or licensed private child welfare agency, in accordance with the requirements of the out-of-state agency.

(3) If a prospective adoptive parent who resides out-of-state cannot pay the expense to attend a pre-placement conference or visit the child, the cabinet may pay travel expenses for the prospective adoptive parent, to the extent funds are available.

(4) If the Kentucky and out-of-state deputy compact administrators agree to the child's visit in accordance with KRS 615.030, a child may visit and be placed with a prospective adoptive parent who resides in another state, in accordance with KRS 615.030. (5)

(5) Upon arrival of the Commissioner or designee, cabinet staff or another adult whom the child knows shall accompany a Kentucky child available for adoption on an out-of-state visit or placement with a prospective out-of-state adoptive parent. [family's present adoption agency, current within one (1) year by the date of the completion of the interstate referral package;

(c) A birth or adoptive child living in the prospective adoptive family's home has been in the home for one (1) year by the time of placement;

(d) Another child placed in the home for the purpose of adoption:

1. Has had his adoption finalized prior to the referral of the Kentucky child; or

2. Is a sibling of the child being referred;

(e) An agreement with the cabinet has been signed by the adoptive family stating that no additional child, except for a sibling of a previously placed child, shall be accepted by the family for adoption until the Kentucky child has been in placement with the family for one (1) year and the adoption has been finalized; and

(f) The family's agency is a licensed private adoption agency and the family's agency has signed the Statement of After-Placement Services.

(3) A prospective out-of-state adoptive family who cannot pay the expense to attend a preplacement conference or visit a Kentucky child may have travel expenses paid by the cabinet.

(4) If the deputy compact administrator in both states provides written approval of the visit and both states sign the Interstate Compact Placement Request, a Kentucky child may travel to visit an out-of-state prospective adoptive family.

(5) Cabinet staff or another adult whom the child knows shall accompany a Kentucky child on an out-of-state visit to a prospective adoptive family upon approval from the secretary for the cabinet.

(6) The adoptive home study shall include:

(a) Documentation that no physical, mental or emotional barrier to the parent's ability to adopt exists;

(b) A written report on any physical or mental illness and documentation of subsequent counseling or treatment including diagnosis, prognosis and the therapist's recommendation regarding appropriateness for adoptive placement;

(c) If applicable, verification of marriage;

(d) If applicable, divorce or death verification of a previous spouse;

(e) A criminal records check;

(f) A child and spouse abuse check and copy of any investigation previously completed by any agency;

(g) Personal and financial reference; and

(h) A statement documenting the family's current status with any previous adoption or foster care agency.]

Section 7. Open Adoption. The cabinet shall not prohibit an open adoption.

Section 8. Postplacement Service. (1) The goal of a post-placement service shall be to:

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- (a) Ensure the success of the placement; and
- (b) Prevent disruption of the placement.

(2) The cabinet shall coordinate support services for a child and a prospective adoptive parent prior to the legal adoption and through finalization of the adoption.~~[provide regular support and counseling service to the child and the adoptive family during the period prior to the legal adoption through finalization.]~~

(3) Until the adoption judgment has been granted by a court of competent jurisdiction, the cabinet shall conduct an annual permanency review of a child placed with a prospective adoptive parent.

(4) Post-Adoption Placement Stabilization Services (PAPSS) shall be offered in accordance with 922 KAR 1:530.

Section 9. Closure of An Approved Adoptive Home. Unless an extension is approved by the commissioner, closure of an approved adoptive home shall occur in accordance with:

- (1) 922 KAR 1:310; or
- (2) 922 KAR 1:350.

Section 10. Service Appeals. A service appeal may be requested in accordance with 922 KAR 1:320. ~~[Until the adoption judgment has been granted by the circuit court, administrative review for a child placed in an adoptive home shall continue.~~

Section 8. Alternative Placement When Disruption Occurs. (1) ~~An alternative placement shall be planned following disruption of an adoptive placement.~~

(2) ~~The child may be placed temporarily with a family that has already adopted a special needs child.~~

Section 9. Reconsideration of a Closed Adoptive Home. The family may reapply and receive approval for adoptive placement:

- (1) ~~If previously closed in good standing; or~~
- (2) ~~Following finalization of an adoption.~~

Section 10. Closure of Approved Adoptive Homes. (1) ~~If an approved family does not receive a placement within three (3) years, the family shall be closed on the third anniversary of the approval date unless an indefinite extension is granted for a family waiting for a nonspecial needs child.~~

(2) ~~Closure of an approved adoptive home shall occur if:~~

(a) ~~An approved adoptive parent is criminally convicted or pleads guilty to charges of a sexual offense designated in KRS 510.040 to 510.140, 510.150, 529.020 to 529.050, 530.020, 530.064, or 531.300 to 531.370;~~

(b) ~~An approved adoptive parent commits:~~

1. ~~A crime of abuse, neglect or exploitation of a child pursuant to KRS 508.100, 508.110, or 508.120; or~~

2. ~~Abuse, neglect or exploitation of a child, pursuant to KRS 600.020(1), substantiated by the cabinet pursuant to 922 KAR 1:330 and, if appealed, 922 KAR 1:320;~~

(c) ~~Physical abuse of a spouse pursuant to KRS 209.020 by the approved adoptive parent is substantiated by the cabinet pursuant to 922 KAR 5:070;~~

(d) ~~Serious physical or mental illness develops to the extent that care of the child by an approved adoptive parent is impaired; or~~

(e) ~~The adoptive parent is convicted of a Class A or Class B felony offense pursuant to KRS Chapter 510; and~~

(3) ~~If closure is necessary for an adoptive family who has a child placed, but the adoption is not finalized, the child shall be removed from the home.~~

(4) ~~If the deficiency that led to closure has been resolved, an adoptive family previously closed due to a deficiency may reapply for approval as an adoptive family.~~

(5) ~~Except for the referral of a sibling of a child previously placed with the adoptive family, the status of a nonfoster adoptive family placed on the register of waiting families shall change to inactive and subsequent referrals for adoptive placement shall not be made until finalization has occurred.]~~

Section 11. Confidentiality of Records. (1) A child's records shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, as described by KRS

194A.060(1), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 620.050, 625.045, 625.108, and 922 KAR 1:510.

(2) If the child is not adopted, the prospective adoptive parent shall return all documentation pertaining to the child to the cabinet within ten (10) working days of the decision not to adopt. ~~[Pursuant to KRS 199.570, no person having charge of an adoption record shall give to an individual:~~

- (1) ~~The name of a party appearing in the record; or~~
- (2) ~~A copy of the record except upon order of the court that granted the adoption.]~~

Section 12. Request for Information from Adoption Records.

(1) Identifying information from the cabinet's record may be released only upon written order by the court upon application to the circuit court that granted the adoption by an adoptee, twenty-one (21) years of age or older.

(2) If the birth parent has not previously filed consent for release of identifying information with the circuit court, the judge may:

(a) Issue a court order requiring the cabinet to conduct a search for each birth parent as identified on the original birth certificate; and

(b) Determine the parent's desire concerning the release of identifying information from the record.

(3) Upon receipt of written request by the adult adoptee or the adoptive family, nonidentifying health and background information may be released by the cabinet from a closed adoption record.

(4) If a request is received from an adoptee, eighteen (18) years of age or older, for contact with an adult preadoptive birth sibling separated during finalization of a closed adoption, cabinet staff shall:

- (a) Review the adoption record; and
- (b) Release identifying information if a mutual request for contact is contained within the record.

(5) If a request is received from a birth relative seeking an adoptee, either adult or minor, information may be given that adoption did occur and reassurance of the well being of the adoptee at last contact may be confirmed, but cabinet staff shall not contact an adoptee or adoptive family at the request of the birth family.

(6) If an adult adoptee seeks contact with the birth family, cabinet staff shall inform the adult adoptee of a birth relative's interest.

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

(a) "DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet", edition 9/08; and

(b) "DPP-112C, Adoption Placement Exception Request", edition 9/08.

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 9, 2008

FILED WITH LRC: October 10, 2008 at noon

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 Community Based Services  
Division of Protection and Permanency  
(As Amended at ARRS, December 9, 2008)**

**922 KAR 1:140. Foster care and adoption permanency services.**

RELATES TO: KRS 199.011(2), 199.555, 199.801, 600.020(6), [610.010(13)], 610.125, 610.127, 620.020(1), (10), [620.023, 620.027], 620.060, 620.090, 620.140(1)(d), 620.180, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1911, 42 U.S.C.

622(b)(9), [42 U.S.C.] 670-679b, 1996, [42 U.S.C. 1966, 42 U.S.C.] 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, [199.472,] 620.180[, 42 U.S.C. 620-628, 672, 673]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. Pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. Sections 620 to 679, KRS 199.467 requires the Secretary for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty-four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty-four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 199.011(2) and 600.020(6)[means the Cabinet for Health and Family Services].

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4)[(2)] "Concurrent planning" means the cabinet [may] simultaneously plans[plan] for:

(a) The return[Reunification] of a child in the custody[under the custodial control] of the cabinet to the child's parent; and

(b) Another permanency goal for the child if[in the event] return to parent is not achieved within fifteen (15) of the last twenty-two (22) months, in accordance with 42 U.S.C. 671(a)(16)[Permanent removal of the child if the prognosis for reunification is poor].

(5) "Parent" is defined by 42 U.S.C. 675(2).

(6)[(3)] "Reasonable efforts" is defined at KRS 620.020(9).

(7) "Relative" means an individual related to a child by blood, marriage, or adoption to a child.

(8) "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population[During each fiscal year], the maximum number of children who [may] receive foster care in excess of twenty-four (24) months shall be[is] 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return[reunite] the child to the child's parent[with his or her parents]:

(a) Have been unsuccessful; or

(b) Are not required under the provisions of KRS 610.127.

(2) A child shall be removed from the child's[his] home if:

(a) [If] An emergency custody order has been obtained pursuant to KRS 620.060; or

(b) [If] A temporary custody order has been obtained pursuant to KRS 620.090; or

(c) A court orders the removal pursuant to KRS 620.140(1)(d).

(3) Upon removal of a child from the child's[his] home:

(a) Placement shall be:

1. Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and

2. Closest in proximity to the child's home, in accordance with KRS 199.801; and

(b) A child placed with a relative shall be considered for the Kinship Care Program, as established in 922 KAR 1:130.

(4) In the provision of permanency services, the cabinet shall meet the requirements of the:

(a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1911 and 42 U.S.C. 1996[1966]; or

(b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(9), [42 U.S.C.] 671(a)(10), and [42 U.S.C.] 1996b.

(5) An absent parent search shall:

(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;

(b) Be conducted to gather as much information as possible related to the person and the person's location which may include:

1. Date of birth;

2. Social Security number;

3. Present or previous employers; and

4. Present or most recent address; and

(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.

(6) If a relative placement is in the best interest of the child, the cabinet shall use an absent parent search to locate a relative.

(7)[be conducted by cabinet staff to locate a parent whose whereabouts are unknown.

(5)] If the case conference held in compliance with KRS 620.180(2)(a)1 results in the child being placed in the custody[custodial control] of the cabinet, the cabinet shall develop and document a case permanency plan, using Form DPP-1281[P&P-1282], Family Case Plan.

(8) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

(9)[(6)] Concurrent planning shall be considered:

(a) During development of the case[a] permanency plan; and

(b) At the six (6) month case review. [documented on the P&P-1282, Family Case Plan. The plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.]

Section 4. Permanency Goals. (1) A permanency goal for a child in custody[under the custodial control] of the cabinet shall be established according to the particular needs and best interest[interests] of the child.

(2) A permanency goal shall include one (1) of the following:

(a) Return to parent;

(b) Adoption;

(c) Permanent relative placement;

(d) Legal guardianship;

(e) Another[Planned] permanent living arrangement; or

(f) Emancipation.

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child in the custody of the cabinet is returned to the parent if the cabinet determines:

(a) A family has made sufficient progress toward completing the case permanency plan; and

(b) Return to the parent is in the best interest of the child.

(2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:

(a)[A child under the custodial control of the cabinet shall be returned to the parent if the cabinet determines:

(a) The home is safe; and

(b) Reunification is in the best interest of the child.

(2) Another permanency goal, as described in Section 4(2) of this administrative regulation, shall be selected if:

(a) A family does not make sufficient progress toward achieving the objectives specified in the Family Case Plan to allow for the safe return of the child and the cabinet seeks a court order for:

1.] A change in the permanency goal; or

(b)[2.] Termination of parental rights or civil action.

(3) If the court determines that[; or

(b)] A circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

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Section 6. Adoption. (1) The permanency goal for a child in the custody[under the custodial control] of the cabinet shall be adoption if:

(a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or

(b) The cabinet pursues involuntary termination of parental rights:

1. Pursuant to KRS 625.090; or

2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675.

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:~~[An exception for proceeding with involuntary termination of parental rights may be requested by the cabinet if:]~~

(a) A relative placement has been secured;

(b) Termination is not in the best interest of the child, for a compelling reason:

1. Documented in the case permanency plan~~[family case plan]~~; and

2. Monitored on a continual basis; or

(c) A service necessary for return to~~[reunification with the]~~ parent has not been provided within the time period specified in the case permanency plan~~[Family Case Plan]~~.

(3) Cabinet staff shall consider involuntary termination of parental rights at each ~~[twelve (12) month]~~ permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child in the custody[under the custodial control] of the cabinet shall be permanent relative placement if:

(1) Return to the parent is not in the child's best interest; and

(2) A relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child in the custody[under the custodial control] of the cabinet shall be legal guardianship if the cabinet determines that:

(a) Return to~~[reunification with]~~ the parent or adoption is not in the child's best interest.

(b) There is an identified adult willing to seek legal guardianship of this child; and

(c) Legal guardianship by the adult identified in subsection (1)(b) of this section is in the child's best interest.

(2) Legal guardianship shall be requested pursuant to KRS 620.140(1)(c).

Section 9. Another Planned Permanent Living Arrangement.

(1) The permanency goal for a child in the custody[under the custodial control] of the cabinet shall be another~~[a]~~ planned permanent living arrangement if:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative and the child has been placed on a national adoption register;

(b) Other permanency goal options have been exhausted~~[considered]~~ and are no longer~~[not]~~ appropriate due to the specific circumstances of the child;

(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest~~[interests]~~ of the child;

(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and~~[The court has determined that it would be in the best interests of the child to be placed in a planned permanent living arrangement; and]~~

(e) The child has formed psychological ties with those with whom the child~~[he]~~ lives, and adoption and guardianship have been discussed with the care provider and are not ~~[appropriate or]~~ viable alternatives.

(2) Approval shall~~[must]~~ be obtained from the commissioner or designee~~[commissioner's office of the Department for Community Based Services]~~ prior to the establishment of another~~[a]~~ planned permanent living arrangement as a permanency goal for a child:

(a) Under the age of sixteen (16); or

(b) Placed with a private child caring agency.

Section 10. Emancipation. (1) The permanency goal for a child in the custody[under the custodial control] of the cabinet shall be emancipation when:

(a) The youth is age sixteen (16) or older; and

(b) Other permanency options have been considered and are not appropriate due to the specific circumstances~~[circumstance]~~ of the child.

(2) If emancipation is established as a permanency goal, the youth shall be referred to an independent living program administered by the cabinet.

Section 11. Permanency Services. (1) The cabinet shall provide services for a child in the custody[under the custodial control] of the cabinet so that permanency is~~[may be]~~ achieved.

(2) Permanency services may include:

(a) Ongoing case work and monitoring of the family to:

1. Maintain the child safely in the child's~~[his]~~ home; and

2. Ensure safe return of the child if the goal is return to the parent~~[reunification]~~;

(b) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;

(c) Postfinalization adoption assistance if~~[when]~~ adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;

(d) Postadoption placement stabilization services as described in 922 KAR 1:530~~[if:]~~

1. A finalized adoption is near dissolution due to the need for extraordinary medical care;

2. The child was placed for adoption by the cabinet;

3. The adoptive parent has made a reasonable effort to meet the needs of the child without assistance; and

4. The child is under eighteen (18) years of age; or

(e)~~[(d)]~~ Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal.

Section 12. Incorporation by Reference. (1) "DPP-1281, Family Case Plan", edition 9/08~~[P&P-1282, Family Case Plan, edition 9/98]~~, is incorporated by reference.

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 9, 2008

FILED WITH LRC: October 10, 2008 at noon

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(Amended After Comments)

**201 KAR 2:105. Licensing and drug distribution requirements for wholesale distributors~~[drug manufacturers and wholesalers]~~.**

RELATES TO: KRS 315.010, 315.402, 315.406~~[315.036, 24 C.F.R. 205.4-205.7]~~

STATUTORY AUTHORITY: KRS 315.010, ~~[315.036,]~~ 315.191(1), 315.402, 315.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.402 and 315.406~~[315.036]~~ authorizes the board to promulgate administrative regulations to regulate wholesale distributors~~[the manufacturers and wholesalers]~~ of drugs. ~~[It also authorizes the board to require by administrative regulation, the maintenance of accurate records of all drugs manufactured, received and sold.]~~ This administrative regulation establishes the requirements for the regulation of wholesale distributors~~[manufacturers and wholesalers]~~.

Section 1. Definition. "Drug sample" means unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.~~[Definitions. (1) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.~~

~~(2) "Blood component" means that part of blood separated by physical or mechanical means.~~

~~(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.~~

~~(4) "Manufacturer" is defined by KRS 315.010(12).~~

~~(5) "Prescription drug" is defined by KRS 315.010(21).~~

~~(6) "Wholesale drug distribution" means the distribution of legend drugs to persons other than consumers or patients and excludes a common carrier or individual retained solely to transport prescription drugs and the lawful distribution of prescription drug samples by manufacturers or their representatives, but shall not include the sale, purchase, or trade of a legend drug, or offer of same:~~

~~(a) By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;~~

~~(b) By hospitals or other health care entities under common control;~~

~~(c) To alleviate emergency medical necessity or temporary shortage between pharmacies;~~

~~(d) By a pharmacist dispensing pursuant to a valid prescription order;~~

~~(e) By intracompany sales; or~~

~~(f) By blood banks.~~

~~(7) "Wholesaler" is defined by KRS 315.010(26).]~~

Section 2. Requirements. (1) A wholesale distributor engaged in wholesale distribution in the Commonwealth~~[wholesaler or distributor]~~ shall apply for a license~~[permit]~~ from the board in accordance with KRS 315.402, 315.406~~[315.036]~~ and this administrative regulation.

(2) A separate license~~[permit]~~ shall be required for each wholesale distributor's facility that distributes within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a licensee~~[permit holder]~~ shall not be required to obtain a license~~[permit]~~ under this section when the agent or employee is acting in the usual course of business or employment.

(4) A license~~[permit]~~ shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sani-

tation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;

(b) Physical separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled merchandise until they are destroyed or returned;

(c) Providing accurate and precise records of all goods shipped or received including source or recipient, date, quantity, itemized description, and any other information pertinent to the transaction; and

(d) Providing proof of registration with the state controlled substance authority, and with the U.S. Drug Enforcement Administration and shall comply with all DEA regulations. ~~[(5) The Kentucky Board of Pharmacy may choose to adopt administrative regulations to include out-of-state distributors or may reciprocally accept in lieu thereof licensure valid by a comparable authority equally recognizing Kentucky's requirements.]~~

Section 3. Qualifications for License~~[Permit]~~. (1) The minimum qualifications shall include:

(a) The Kentucky Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the Commonwealth:

1. Any convictions of the applicant under any federal, state, or local laws relating to drug samples and~~[,]~~ wholesale or retail drug distribution of controlled substances;

2. Any felony convictions of the applicant under federal, state, or local laws;

3. The applicant's past experience in the wholesale ~~[manufacture or]~~ distribution of prescription drugs, including controlled substances;

4. The furnishing by the applicant of false or fraudulent material in any application made in connection with wholesale ~~[drug manufacturing or]~~ distribution;

5. Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant for wholesale ~~[the manufacture or]~~ distribution of any drugs, including controlled substances;

6. Compliance with the requirements under any previously granted license or permit, if any; and

7. Compliance with requirements to maintain or make available to the Kentucky Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section.

(b) The Kentucky Board of Pharmacy shall have the right to deny a license~~[permit]~~ to an applicant if it determines that the granting of that license~~[permit]~~ would not be in the public interest based on health and safety considerations.

(2) A license~~[permit]~~ shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drugs; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(3) ~~[A permitted manufacturer or wholesaler may sell or distribute federal legend drugs only to the following:~~

~~(a) A currently permitted manufacturer;~~

~~(b) A currently permitted wholesaler;~~

~~(c) A currently licensed pharmacy;~~

~~(d) A currently licensed practitioner;~~

~~(e) A currently licensed hospital, but only for use by or in that hospital;~~

~~(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.~~

~~(4)] A license issued pursuant to this administrative regulation may be suspended or revoked for failure to comply with the provi-~~

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sions of KRS 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412, [KRS 315.036] or this administrative regulation.

Section 4. Application, Fees, Renewals. (1) An application for a license[permit] shall be submitted to the Board of Pharmacy on "Application for a License to Operate as a Wholesale Distributor[Drug-Wholesaler or Manufacturer] (KBP W 9:08[W/M 9:92])".

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the licensee;

(b) All trade or business name used by the licensee;

(c) Addresses, telephone numbers, and the names of contract persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and[and/or] operator of the licensee, including:

1. If a person, the name and social security number of the person;

2. If a partnership, the name and social security number of each partner, and the name of the partnership;

3. If a corporation, the name, social security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and social security number of the sole proprietor and the name of the business entity; and

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs.

(4) All licenses[permits] shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon renewal[proper] application accompanied by the renewal fee set forth in 201 KAR 2:050 and shall be nontransferable.

Section 5. Standards. (1) Facilities.

(a) All buildings in which legend drugs are held for wholesale distribution[wholesaled], repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) Buildings shall meet all applicable federal, state, and local standards. The facility shall have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened.

(c) A facility shall not be located in a residence.

(2) Security.

(a) A wholesale distributor [drug distribution center] shall be equipped with an alarm system to detect entry after hours.

(b) A wholesale [drug] distributor shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where legend drugs are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A licensee[permit holder] shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs. ~~[(e) Lists of officers, directors, managers and other persons in charge of distribution, storage, and handling of prescription drugs, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.]~~

(3) Recordkeeping.

(a) Inventories and other records of transactions regarding the receipt and disposition of legend drugs shall be maintained and readily available for inspection or photocopying by authorized law

enforcement officials for a period of two (2) years following disposition of the drugs. These records shall include:

1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

2. The identity and quantity of the drugs received and distributed or disposed of; and

3. The dates of receipt and distribution or other distribution of the drugs.

(b) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(4) Written policies and procedures.

(a) A Wholesale Distributor[Wholesale] [drug] distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and to assure that the wholesale [drug] distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. Such crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(b) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(c) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesale [drug] distributor's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(d) There shall be written policies and procedures by which the wholesale[wholesaler drug] distributor exercises control over the shipping and receiving of all stock within the operation.

(5) Returned, damaged, and outdated prescription drugs. A wholesale distributor[operation] shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods ~~if[-When]~~ conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed, or returned ~~[to the supplier]~~, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale [drug] distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A wholesale distributor[operation] shall maintain and follow written policy for handling recalls and withdrawals of products. The policy shall cover all recalls and withdrawals of drug products due to:

(a) Any voluntary action on the part of the manufacturer;

(b) The direction of the Food and Drug Administration, or any other federal, state, or local government agency; and

(c) Replacement of existing merchandise with an improved product or new package design.

(7)(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the oldest inventory is distributed first.

(c) A wholesale [drug] distributor shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing[; including Chapter 21, Parts 207, 240, and 244 of the Code of Federal Regulations].

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Section 6. Pedigree. (1) Effective July 1, 2009 and in accordance with KRS 315.406[315.408], each person or entity engaged in the wholesale distribution of prescription drugs that leave or that have ever left the normal distribution channel shall, prior to the distribution of the prescription drug, provide a pedigree to the person receiving the prescription drug.

(2) The pedigree shall include the following information concerning the prescription drug:

(a) The proprietary and established name of the prescription drug;

(b) The dosage;

(c) The size of the container;

(d) The number of containers;

(e) The lot number of control number of the prescription drug;

(f) The business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and

(g) The date of each previous transaction.

(3) Pedigree records shall be maintained and readily be available for inspections or photocopying by authorized law enforcement officials for a period of two (2) years. [Pharmacist-in-charge: A manufacturer shall designate a pharmacist-in-charge of the facility who shall be responsible to the board for security and record-keeping. The pharmacist-in-charge shall review the security and records by conducting an on-site inspection not less than quarterly and recording the results of those inspections in the policy and procedure manual.]

Section 7. Violations. (1) A wholesale distributor [drug manufacturer or wholesaler] shall not distribute legend drugs directly to a consumer or a patient or operate in a manner that endangers the public health.

(2) Violation of any of these provisions shall be grounds for the suspension or revocation of the license.

Section 8.[9:] Incorporation by Reference. (1) "Application for a License to Operate as a Wholesale Distributor[Drug Wholesaler or Manufacturer]" (KBP W 9:08[W/M 9:92]) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511 [23 Millcreek Park, Frankfort, Kentucky 40604], Monday through Friday, 8 a.m. to 4:30 p.m.

W. MICHAEL LEAKE, President

APPROVED BY AGENCY: November 14, 2008

FILED WITH LRC: December 12, 2008 at 10 a.m.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows the Board to establish requirements for wholesale distributors.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.402, 315.406, and 315.191(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the Board to promulgate administrative regulations on all matters set forth in KRS Chapter 315.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will establish the requirements for wholesale distributors to be licensed by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation after

written comment require all applicants to provide social security numbers.

(b) The necessity of the amendment to this administrative regulation: The amendments to the administrative regulation after written comment are necessary to require social security numbers from all applicants.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to the administrative regulation after written comment are in conformity with the authorizing statutes that require the Board to promulgate an administrative regulation regarding wholesale distributors.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to the administrative regulation after written comment will require social security numbers from all applicants for a wholesale distributor's license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates that eight hundred (800) wholesale distributors that distribute or sell drugs into the Commonwealth 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: All applicants will be required to provide a social security number. The social security number is a unique identifier that assists the board in identifying all individuals making application for a wholesale distributor's license. The social security number may be utilized by the board to afford a due process hearing or for legitimate governmental purposes; but will be subject to privacy protection outside those purposes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will allow the wholesale distributors to be able to distribute or sell drugs within the Commonwealth.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied as the regulation is applicable to applicant's for a wholesale distributor's license.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy 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 315.402, KRS 315.406 and KRS 315.191(1)(a)



requires or authorizes the action taken by this administrative regulation.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(Amended After Comments)**

**301 KAR 1:125. Transportation of fish.**

RELATES TO: KRS 150.010, 150.025, 150.170, 150.180, 150.235, 150.485, **9 C.F.R. 71, 83, 93**

STATUTORY AUTHORITY: KRS 13A.350, 150.025(1)(c), (1)(h), 150.180(6), 150.235, **EO 2008-516**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.** This administrative regulation provides for [the] control of [over] the transportation of fish, fish eggs, live bait, and other aquatic organisms into, through, and within the state in order [It is necessary] to protect the resident fish population. [EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.]

Section 1. Definitions. (1) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and **not stocked into waters of the Commonwealth.** [does not include fish used in aquaculture, the bait industry, or fish sold for stocking in Kentucky.]

(3) "Certified VHS free facility" means a fish-rearing facility that has been certified [by APHIS to be] VHS free **by an APHIS approved laboratory.**

(4) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(5) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

(6) "VHS positive state" means any state in the United States, or any Canadian province, listed **on the APHIS Web site www.aphis.usda.gov as established in 9 C.F.R. 71, 83, and 93** [by APHIS] as being positive for Viral Hemorrhagic Septicemia (VHS).

(7) "VHS-regulated fish species" means any species of fish deemed susceptible to VHS and is listed on the APHIS Web site at **www.aphis.usda.gov as established in 9 C.F.R. 71, 83, and 93.**

Section 2. A Fish Transportation Permit is not needed:

(1) By an individual to transport aquarium species;

(2) By permitted Kentucky fish propagators as established in 301 KAR 1:115, except ~~if/when~~ transporting fish into Kentucky from another state **or country**;

(3) By individuals with a sport or commercial fishing license to transport legally caught bait or fish;

(4) By individuals ~~[that are]~~ transporting fish purchased from a licensed live bait dealer for stocking in private waters;

(5) By agents of the department while performing their normal duties; **or**

(6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

Section 3. Live Fish, ~~[Eggs,]~~ Live Bait, or Other Aquatic Organisms. (1) All individuals, corporations, or other business entities that transport any live fish, ~~[fertilized fish eggs,]~~ live bait as defined in 301 KAR 1:132, **Section 1**, or other live aquatic organism, except those individuals listed in Section 2 of this administrative regulation, into, within, or through Kentucky shall have in possession a:

(a) Fish Transportation Permit issued in the name of the individual, corporation, or other business entity transacting the business; **and**

(b) Bill of lading showing the origin and destination of the organisms being transported.

(2) **An individual shall also possess a Live Fish and Bait Dealers License**, as established in 301 KAR 1:132. ~~[must also be in possession]~~ if the organisms ~~shall~~ ~~[are to]~~ be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free and ~~[no]~~ prohibited species listed in 301 KAR 1:122 shall **not** be present.

(4) **If any VHS-regulated fish species from a VHS positive state are transported** ~~[the live fish or fertilized eggs being transported]~~ and unloaded in Kentucky, ~~[are from a known VHS positive state,]~~ in addition to the requirements established in **subsections (1), (2), and (3) of this section** ~~[Sections 3(1) and (2) and 4]~~ of this administrative regulation, the following requirements shall ~~[also]~~ apply:

(a) If the origin of the **VHS-regulated fish species** ~~[live fish or fertilized eggs]~~ is from a certified VHS free facility, **the individual shall possess** a copy of the documentation showing that the facility is VHS free ~~[shall also be in possession].~~

(b) If the origin of the **VHS-regulated fish species** ~~[live fish or fertilized eggs]~~ is from a non-certified VHS free facility then:

1. **The VHS-regulated fish species** ~~[live fish or fertilized eggs]~~ shall only be unloaded at a state inspected fish-processing plant or research and diagnostic laboratory;

2. **The individual shall possess** a copy of the APHIS VS 1-27 permit for Movement of Restricted Animals issued by an APHIS area office shall also be in possession; and

3. Water from the fish transportation tank shall only be discharged into a municipal sewage system that includes waste water disinfection or into ~~[either]~~ a nondischarging settling pond devoid of fish, ~~[for a settling pond that disinfected according to all EPA criteria.]~~

(5) **If the origin of the VHS-regulated fish species is** ~~[live fish or fertilized eggs are]~~ from a ~~[known]~~ VHS positive state and are only being transported through Kentucky then **only** ~~[in addition to]~~ the requirements established in **subsections (1) and (3) of this section** ~~[Sections 3(1) and (2)]~~ and Section 4 of this administrative regulation ~~[the following requirements]~~ shall ~~[also]~~ apply.:

(a) No live fish or eggs shall be unloaded in Kentucky; and

(b) No water shall be discharged or exchanged while in Kentucky;

(6) **VHS-regulated fish species** ~~[Live fish, fertilized eggs, live bait, or other aquatic organisms]~~ being transported from a known VHS positive state into, within, or through Kentucky that do not meet all requirements established in **Sections 3 and 4 of this administrative regulation** ~~[Sections 3(1), 3(2), 3(3) and 4 may]~~ be confiscated for disposal purposes.

Section 4. Fish Transportation Permit Application. (1) **If an individual, corporation, or other business entity** ~~[that]~~ wants to transport fish, ~~[fish eggs,]~~ live bait, or other aquatic organisms into, within, or through Kentucky **they first** shall submit a completed

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Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR 3:022.

**(2) If an individual, corporation, or other business entity wants to transport VHS-regulated fish species into or through Kentucky from a VHS positive state, in addition to the requirements established in subsection (1) of this section they must also submit a:** ~~[and the following, if transporting fish or fertilized eggs from a VHS positive state:]~~

(a) Copy of the documentation showing that the facility that the **VHS-regulated fish species** ~~[fish or fertilized eggs]~~ are coming from is Certified as being VHS free; or

(b) Copy of the APHIS VS 1-27 permit if the facility is not certified as being VHS free.

**(3)(2)** ~~An individual, corporation, or other business entity shall not transport fish, [fish eggs,] live bait, or other aquatic organisms into, within, or through Kentucky without[until] an approved Fish Transportation Permit is in possession.~~

**(4) If an individual, corporation, or other business entity desires to transport VHS-regulated fish species from a facility in a VHS positive state that is currently not listed on their Fish Transportation Permit,** ~~(3) Prior to transporting any live fish or fertilized eggs into or through Kentucky from a facility in a known VHS positive state that is not listed on an issued Fish Transportation Permit~~ the permittee shall:

(a) Notify the department; and

(b) If approved **by the commissioner**, be sent an updated Fish Transportation Permit listing the approved facility.

Section 5. Transportation of Roe-Bearing Fish and Roe. (1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as **established** ~~[defined]~~ in 301 KAR 1:155 into, within, or through Kentucky, shall have in possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester's name and commercial fishing license and roe-bearing harvester's permit numbers listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155, **Section 4(4)(d)3**.

Section 6. All officers and agents of the department have the authority to demand of the transporter, at any time, that ~~[he]~~ prohibited species listed in 301 KAR 1:122 **shall not be present and proof that the transporter possesses** ~~[are present and proof that]~~ all appropriate permits and documentation ~~[are in possession]~~.

Section 7. Fish Transportation Permit Revocation and Nonrenewal. (1) The Department shall revoke and not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they:

(a) Falsify the documentation needed ~~[in possession]~~ to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit; or

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

(2) An individual, corporation, or other business entity whose Fish Transportation Permit has been denied, revoked or not renewed may request an administrative hearing pursuant to KRS Chapter 13B.

Section 8. Incorporated by Reference. (1) "Application for Fish Transportation Permit", 2008 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[Section 4. All individuals, corporations, or other business entities who transport any live fish, live bait (as defined in 301 KAR 1:130) or other live aquatic organism into, within, or through the Commonwealth of~~

Kentucky must have a transportation permit issued in the name of the individual, corporation, or other business entity transacting the business.

Section 2. All officers and agents of the Department of Fish and Wildlife Resources have the authority to demand, at any time, proof by the transporter that:

(1) An appropriate transportation permit or exact copy, listing the species carried, is in possession.

(2) An appropriate live fish and bait dealers license has been issued, if the organisms are to be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of the commonwealth.

(3) The organisms in transport are free of disease and that no prohibited species listed in 301 KAR 1:122 are present.

(4) That a bill of lading showing the origin and destination of all of the organisms being transported is in possession.]

BENJY KINMAN, Acting Deputy Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: December 9, 2008 8 a.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation controls the transportation of fish, fish eggs, live bait and other aquatic organisms into, through, and within the state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the resident fish populations of Kentucky by attempting to prevent the introduction of Viral Hemorrhagic Septicemia (VHS), a disease of fish, into Kentucky. The amendments to this regulation complement the USDA APHIS Amended Federal Order for VHS, dated April 2, 2008.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department to promulgate administrative regulations to regulate the transportation of game and fish and to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of the chapter. KRS 150.180 gives the Department the authority to issue a fish transportation permit that allows only the transportation of fish and wildlife in the state that do not constitute a menace to the state and are free of disease. KRS 150.235 states that a license or permit must be procured prior to performing any authorized act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the purpose of KRS 150.025 by regulating the transportation of fish and other aquatic organisms that are transported into, through, and within Kentucky. It fulfills the purpose of KRS 150.180 by prohibiting fish that either may become a menace to the state or are carrying a disease. It also fulfills the purpose of KRS 150.235 by requiring a person to have in possession a fish transportation permit while transporting fish, fish eggs, live bait and other aquatic organisms into, within, or through Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will regulate the movement of fish, fish eggs, live bait, and other aquatic organisms into and through Kentucky from VHS positive states and allow a commercial fisherman's helper to transport roe fish and roe in the absence of the commercial fisherman.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prevent the transportation of undesirable and diseased fish into Kentucky and to allow an

unlicensed commercial fisherman's helper to legally transport roe and roe fish.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who transport live fish, fish eggs, live bait, and other aquatic organisms into, through, or within the state will be affected. Presently, the Fisheries Division issues 80-100 Transportation permits per year. It is not known how many fish haulers transporting fish from VHS positive states will be affected. Currently, there are 107 commercial fishermen who reported harvesting roe fish during the past two years and their unlicensed helper may transport roe fish or roe if they elect to obtain this permit.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who transport live fish or fish eggs into or through Kentucky from a VHS positive state will now need to have documentation that the fish being transported are from a certified VHS free facility or a copy of the APHIS VS 1-27 permit for Movement of Restricted Animals to comply with this amendment. Presently, commercial fishermen's helpers are prohibited from fish or roe transport. These helpers may now apply for this permit and legally transport fish or roe in the absence of the commercial fisherman.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a \$25 fee for the annual Fish Transportation Permit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who transport fish from a VHS positive state will not violate a Federal Order when transporting fish from VHS positive states. Commercial fishermen's helpers will now be able to transport roe fish and roe in the absence of a commercial fisherman.

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

(a) Initially: Initially, the number of permits issued is expected to increase by 50 percent to 120 permits per year. Therefore, there will be an increase in administrative cost to issue and track the permits.

(b) On a continuing basis: There will be no additional cost on a continuing basis after the first year of implementation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cost of the Fish Transportation Permit will need to increase from \$0 to \$25 to cover the increased administrative costs. This fee will be established in 301 KAR 3:022.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fish transportation permit fee will be established in a separate regulation, License, tag, and permit fees, 301 KAR 3:022.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who transport fish, fish eggs, live bait and other aquatic organisms into, within, or through the state were treated equally. In addition all commercial fishermen are being treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement 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 150.025 authorizes the Department to promulgate administrative regulations to regulate the transportation of game and fish and to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of the chapter. KRS 150.180 gives the Department the authority to issue a fish transportation permit that allows only the transportation of fish and wildlife in the state that do not constitute a menace to the state and are free of disease.

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? Approximately \$3,000 will be generated for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$3,000 per year will be generated during subsequent years.

(c) How much will it cost to administer this program for the first year? Staff currently spends about 75 hours per year administering the program at a cost of about \$2,900. The number of permits are expected to increase by 50% at an estimated cost of \$4,400.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program in subsequent years is \$4,400.

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:

#### PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division (Amended After Comments)

#### 806 KAR 3:170. Annual audited financial reports.

RELATES TO: KRS 304.2-065, 304.2-210 – 304.2-290, 304.3-120, 304.3-125, 304.3-240, 304.3-241, 304.17A-820, 304.32-210, 304.35-040, 304.37-010, 304.37-020, 304.36-140, **304.42-150**[304.42-140], 304.48-110, 304.49-080, 304.50-075, 18 U.S.C. 1961, 1968

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-240(2)

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a Commissioner. KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, defined in KRS 304.1-010. KRS 304.3-240 authorizes the Executive Director of Insurance to require additional information to the annual statement filed by insurers. This administrative regulation requires annual filing of audited financial reports by insurers.

Section 1. Definitions. [As used in this administrative regulation:](1) "Audited financial report" means and includes those items specified in Section 4 of this administrative regulation;

(2) "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice,

and for Canadian and British insurers, mean a Canadian-chartered or British-chartered accountant.

(2) "Affiliate" or "affiliated" means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.[]

(3) "Audit Committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers.

(4) "Audited financial report" means and includes those items specified in Section 4 of this administrative regulation.

(5) "Commissioner" means the Commissioner["Executive Director" means the Commissioner] of the Department[Kentucky Office] of Insurance.

(6) "Controlling person" is defined in KRS 304.37-010(8).

(7) "Department" means Department of Insurance.

(8) "Group of Insurers" means those licensed insurers included in the reporting requirements of KRS 304.37-020, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(9) "Insurer" means an insurer authorized to do business in Kentucky by the commissioner.

(10) "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

(11) "SEC" means the United States Securities and Exchange Commission.

(12) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated under Section 404.

(13) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant.

(14) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) The preapproval requirements of Section 201;

(b) The audit committee independence requirements of Section 301; and

(c) The internal control over financial reporting requirements of Section 404.

(15)[];

(4) "Office" means the Kentucky Office of Insurance;

(5) "Insurer" means an insurer authorized to do business in Kentucky by the executive director; and

(6) "Work papers" mean the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountant's audit[examination] of the financial statements of an insurer. Work papers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of insurer documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the independent certified public accountant's audit[examination] of the financial statements of an insurer and which support the independent certified public accountant's opinion of the financial statements of an insurer.

Section 2. Purpose and Scope. (1) The purpose of this administrative regulation is to improve the department's[office's] surveillance of the financial condition of insurers by requiring:

(a) An annual audit of financial statements reporting the financial position and the results of operations of insurers[an annual examination] by independent certified public accounts;

(b) Communication of internal control related matters noted in an audit; and

(c) Management's report of internal control over financial reporting. [of the financial statements reporting the financial position and results of operations of insurers.]

(2) Every insurer shall be subject to this administrative regulation. Insurers having direct premiums written in this state of less than one (1) million dollars in any calendar year and less than 1,000 policyholders or certificate holders of direct[directly] written policies nationwide at the end of the calendar year shall be exempt from this administrative regulation for years in which these conditions exist. [(unless the commissioner[executive director] makes a specific finding that compliance is necessary for the commissioner[executive director] to carry out statutory responsibilities[]), except that insurers having assumed premiums pursuant to contracts or treaties of reinsurance of one (1) million dollars or more shall not be exempt.

(3) Foreign or alien insurers filing the audited financial report[reports] in another state, pursuant to the other state's requirement for filing an[of] audited financial report[reports] which has been found by the commissioner[executive director] to be substantially similar to the requirements of this administrative regulation, are exempt from this administrative regulation if:

(a) The following documents, which are filed with the other state are filed with the commissioner in accordance with Sections 4, 11, and 12 of this administrative regulation:

1. A copy of the audited financial report;

2. Communication of internal control related matters noted in an audit; and

3.[] report on significant deficiencies in internal controls, and[]

The accountant's letter of qualifications; [which are filed with the other state are filed with the executive director in accordance with the filing dates specified in Sections 4, 11, and 12 of this administrative regulation respectively—](Canadian insurers may submit accountants' reports as filed with the Office of Superintendent of Financial Institutions, Canada[Canadian Dominion Department of Insurance]); and

(b) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner[executive director] within the time specified in Section 9 of this administrative regulation.

(4) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state shall be exempt from filing the report in this state provided:

(a) The other state has substantially similar reporting requirements; and

(b) The report is filed with the commissioner of the other state within the time specified.

(5) This administrative regulation shall not prohibit, preclude, or in any way limit the commissioner[executive director] from ordering, conducting, or performing examinations of insurers under KRS 304.2-210 through 304.2-290, 304.17A-820, 304.32-210, 304.35-040, 304.36-140, 304.42-150, 304.48-110, 304.49-080, or 304.50-075[the Kentucky Insurance Code].

Section 3. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment. (1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner[executive director] on or before June 1 for the year ended December 31 immediately preceding. The commissioner[executive director] may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner[executive director] for thirty (30) day periods upon showing by the insurer and its independent certified public ac-

countant the reasons for requesting the extension and determination by the ~~commissioner~~[~~executive director~~] of good cause for an extension. The request for extension shall be submitted in writing not less than ten (10) days prior to the due date and contain sufficient detail to permit the ~~commissioner~~[~~executive director~~] to make an informed decision as to the requested extension.

(3) If an extension is granted in accordance with subsection (2) of this section, a similar extension of thirty (30) days shall be granted to the filing of management's report of internal control over financial reporting.

(4) Every insurer required to file an annual audited financial report pursuant to this administrative regulation shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this administrative regulation at the election of the controlling person.

Section 4. Contents of Annual Audited Financial Report. (1) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance supervisory authority of the insurer's state of domicile.

(2) The annual audited financial report shall include the following:

- (a) Report of independent certified public accountant;
- (b) Balance sheet for reporting admitted assets, liabilities, capital, and surplus;
- (c) Statement of operations;
- (d) Statement of cash flows;
- (e) Statement of changes in capital and surplus;
- (f) Notes to financial statements as required by KRS 304.3-240 in accordance with KRS 304.3-241. These notes shall ~~be those required by the appropriate National Association of Insurance Commissioners Annual Statement Instructions and any other notes required by generally accepted accounting principles and shall~~ also include:

1. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to KRS 304.3-240 with a written description of the nature of these differences; and

2. A summary of ownership and relationships of the insurer and all affiliated companies; and

(g) The financial statements included in the audited financial report shall be:

1. Prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the ~~commissioner~~[~~executive director~~], and

2. Comparative,~~[the financial statement shall be comparative,]~~ presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The annual statement forms and instructions are those prescribed by the National Association of Insurance Commissioners as required by KRS 304.3-240, Life and Accident and Health (Form 1, 1990) and Fire and Casualty (Form 2, 1990), incorporated by reference and available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays].

Section 5. Designation of Independent Certified Public Accountant. (1) Each insurer required by this administrative regulation to file an annual audited financial report shall, within sixty (60) days after becoming subject to this requirement, register with the ~~commissioner~~[~~executive director~~] in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this administrative regulation. Insurers not retaining an independent certified public accountant on the effective date of this administrative regulation shall register the name and address of their retained certified public

accountant not less than six (6) months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the ~~commissioner~~[~~executive director~~], stating that the accountant is aware of the provisions of the insurance laws of the insurer's state of domicile that relate to accounting and financial matters and affirming that the accountant will express the accountant's opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance regulatory authority in that state, specifying any exceptions as the accountant may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall:

(a) Within five (5) business days notify the ~~commissioner~~[~~office~~] of this event;

(b) ~~Furnish~~[~~The insurer shall also furnish~~] the ~~commissioner~~[~~executive director~~] with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding the accountant's resignation there were any disagreements with the former accountant on any matter of:

- 1. Accounting principles or practices;
- 2.~~[-]~~ Financial statement disclosure; or
- 3.~~[-]~~ Auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The disagreements required to be reported in response to this subsection shall include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section shall be~~are~~ those that occur at the decision making level, that is, between personnel of the insurer responsible for presentation of its financial statements and personnel for the accounting firm responsible for rendering its report;

(c)~~[-]~~ ~~Request~~[~~The insurer shall also in writing request~~] the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which the accountant does not agree;~~[-]~~ and

(d) ~~Furnish~~ [~~the insurer shall furnish~~] the responsive letter from the former accountant to the ~~commissioner~~[~~executive director~~] together with its own.

Section 6. Qualifications of Independent Certified Public Accountant. (1) The ~~commissioner~~[~~executive director~~] shall not recognize any person or firm as a qualified independent certified public accountant if the person or firm:

(a) Is [~~that is~~] not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British insurer, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

(2) Except as otherwise provided in this administrative regulation, an independent certified public accountant shall be recognized as qualified ~~if~~~~[as long as]~~ the independent certified public accountant conforms to the standards of the accounting profession, as contained in the ~~[Code of Professional Conduct of the American Institute of Certified Public Accountants (January 12, 1988) and]~~ statutes, administrative regulations, and codes of ethics and rules of professional conduct administered by the State Board of Accountancy of Kentucky in accordance with KRS Chapter 325 and 201 KAR Chapter 1~~[(1991), or similar code both incorporated by reference and available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), on weekdays]~~.

(3) The lead or coordinating audit partner having primary responsibility for the audit shall not~~[No partner or other person responsible for rendering a report may]~~ act in that capacity for more than seven (7) consecutive years. ~~The~~~~[Following any period of service the]~~ person shall be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries

or affiliates for a period of ~~five (5)~~~~[two (2)]~~ years. The requirements of this subsection shall become effective two (2) years after the effective date of this administrative regulation.

(a) An insurer may make application to the ~~commissioner~~~~[executive director]~~ for relief from this rotation requirement on the basis of unusual circumstances. Application shall be made at least thirty (30) days before the end of the calendar year. The commissioner~~[executive director]~~ may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
2. Premium volume of the insurer;
3. Number of jurisdictions in which the insurer transacts business.

(b) The insurer shall file with its annual statement filing the approval for relief from paragraph (a)1 of this subsection with the states that it is licensed in or doing business in and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, <https://www2.naic.org/servlet/Index>.

(c) The ~~commissioner~~~~[executive director]~~ shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by any natural person who:

1. Has been convicted of fraud, bribery, or a conviction of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, 1968~~], or any dishonest conduct or practices under federal or state law;~~
2. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this administrative regulation; or
3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this administrative regulation.

(4) If an insurer disagrees with a determination made by the ~~commissioner~~~~[executive director]~~ pursuant to subsection (3) of this section, it may request a hearing in accordance with KRS 304.2-310~~[as set forth in KRS Chapter 304.2]~~.

(5)(a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;
2. Financial information systems design and implementation;
3. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
4. Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:

a. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

b. The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and

c. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

5. Internal audit outsourcing services;
6. Management functions or human resources;
7. Broker or dealer, investment adviser, or investment banking services; or
8. Legal services or expert services unrelated to the audit

(b) A qualified independent public accountant shall not:

1. Function in the role of management;
2. Audit his or her own work; and
3. Serve in an advocacy role for the insurer.

(6)(a) Insurers having direct written and assumed premium of less than \$100,000,000 in any calendar year may request an exemption from subsection (5)(a) of this section.

(b) To request an exemption, the insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions.

(c) If the commissioner finds, upon review of this statement, that compliance with this administrative regulation would constitute an organizational hardship upon the insurer, an exemption may be granted.

(7) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subsection 5(a) of this section or that do not conflict with subsection (5)(b) of this section, only if the activity is approved in advance by the audit committee in accordance with subsection (8) of this section.

(8)(a) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee.

(b) The preapproval requirement is waived with respect to nonaudit services if:

1. The insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity; or

2.a. The aggregate amount of all non-audit services provided to the insurer constitutes not more than five (5) percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

b. The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

c. The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant approvals has been delegated by the audit committee.

(9) The audit committee may delegate to one (1) or more designated members of the audit committee the authority to grant the preapprovals required by subsection (8) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(10)(a)1. The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if the following were employed by the independent certified public accountant and participated in the audit of that insurer during the one (1) year period preceding the date that the most current statutory opinion is due:

- a. A member of the board;
- b. President;
- c. Chief executive officer;
- d. Controller;
- e. Chief financial officer;
- f. Chief accounting officer; or
- g. any person serving in an equivalent position for that insurer.

2. This subsection shall only apply to partners and senior managers involved in the audit.

3. An insurer may make application to the commissioner for relief from the above requirements on the basis of unusual circumstances.

(b) The insurer shall file, with its annual statement filing, the approval for relief from subsection (10)(a) of this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, <https://www2.naic.org/servlet/Index>.

Section 7. Consolidated or Combined Audits. An insurer may make written application to the ~~commissioner~~~~[executive director]~~ for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial reports if the insurer is part of a group of insurers which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet or a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown in the annual statements of the insurers.

Section 8. Scope of Examination and Report of Independent Certified Public Accountant. (1) Financial statements furnished pursuant to Section 4 of this administrative regulation shall be examined by ~~the~~~~[an]~~ independent certified public accountant.

(2) The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards.

(3) In accordance with SAS No. 109, "Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement" and SAS No. 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained", or their replacements, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit.

(4) To the extent required by SAS 109 and SAS 110, for those insurers required to file a management's report of internal control over financial reporting pursuant to Section 2 of this administrative regulation, the independent certified public accountant shall consider the most recently available report in planning and performing the audit of the statutory financial statements.

(5) Consideration shall also be given to other procedures illustrated in the Financial Condition Examiner's Handbook of the National Association of Insurance Commissioners [(1990), incorporated by reference and available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m. (ET), weekdays,] which the independent certified public accountant deems necessary.

Section 9. Notification of Adverse Financial Condition. (1)(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the ~~commissioner~~~~[executive director]~~ as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of KRS 304.3-120 and 304.3-125~~[the Kentucky Insurance Code]~~ as of that date.

(b) An insurer which has received a report pursuant to this subsection shall forward a copy of the report to the ~~commissioner~~~~[executive director]~~ within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of this report being furnished to the ~~commissioner~~~~[executive director]~~.

(c) If the independent certified public accountant fails to receive this evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the ~~commissioner~~~~[executive director]~~ a copy of its report within the next five (5) business days.

(2) ~~An independent certified public accountant shall not~~~~[It is not the intent of the commissioner that an independent certified public accountant]~~ be liable in any manner to any person for any statement made in connection with subsection (1) of this section if the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this administrative regulation, becomes aware of facts which might have affected his report, the commissioner notes the obligation of the accountant to take the action prescribed in volume 1, section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants [(1990), incorporated by reference and available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays].

Section 10. Communication of Internal Control Related Matters Noted in an Audit~~[Report on Significant Deficiencies in Internal Controls]~~.

(1)(a) In addition to the annual audited financial statements, each insurer shall furnish the ~~commissioner~~~~[executive director]~~ with a written communication as to any unremediated material weakness in its internal control over financial reporting noted during the audit.

(b) The communication shall be~~[report]~~ prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weaknesses as of December 31 immediately preceding in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements.

(c) If no unremediated material weaknesses were noted, the communication shall state that none were found.

(2) An insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the action is not described in the accountant's communication, [describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS 60 communication of internal control structure matters noted in an audit (AU sec. 325 of the Professional Standards of the American Institute of Certified Public Accountants, (1990), available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the office within sixty (60) days after the filing of the annual audited financial statement. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.]

Section 11. Accountant's Letter of Qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in ~~[the Code of Professional Conduct and Pronouncements of the American Institute of Certified Public Accountants (January 12, 1988) and]~~ statutes, administrative regulations, and rules of professional conduct of the State Board of Accountancy of Kentucky set forth in KRS Chapter 325 and 201 KAR Chapter 11~~(1991), both available from the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. (ET), weekdays, or similar code];~~

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing in this administrative regulation prohibits the accountant from utilizing staff as the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted~~[accepting]~~ auditing standards;

(3) That the accountant understands the annual audited financial report, that the accountant's opinion on it will be filed in compliance with this administrative regulation, and that the commissioner[executive director] will be relying on this information in monitoring and administrative regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of Section 12 of this administrative regulation and that the accountant consents and agrees to make available for review by the commissioner[executive director], his designee, or his appointed agent, the work papers;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants;

(6) A representation that the accountant is in compliance with the requirements of Section 6 of this administrative regulation.

Section 12. Availability and Maintenance of Independent Certified Public Accountant Work Papers. (1) Every insurer required to file an audited financial report pursuant to this administrative regulation shall require the accountant to make available for review by department[office] examiners all work papers prepared in the conduct of the accountant's audit[examination] and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department[offices] of the office, or any other reasonable place designated by the commissioner[executive director]. The insurer shall require that the accountant retain the audit work papers and communications until the department[office] has filed a report on examination covering the period of the audit, but no longer than seven (7) years from the date of the audit report.

(2) In the conduct of the periodic review by department[office] examiners described in subsection (1) of this section, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the department[office]. Reviews by the department[office] examiners shall be considered investigations and all working papers and communications obtained during the course of shall be afforded the same confidentiality as other examination work papers generated by the department[office].

Section 13. Requirements for Audit Committees. This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this administrative regulation. Each accountant shall report directly to the audit committee.

(2) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (5) of this section and section 3(4) of this administrative regulation.

(3)(a) A member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee, accept any consulting advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary.

(b) Notwithstanding paragraph (a) of this subsection, if the law requires board participation by otherwise nonindependent members, that law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(4) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of:

(a) The next annual meeting of the responsible entity; or

(b) One year from the occurrence of the event that caused the member to be no longer independent.

(5)(a) To exercise the election of the controlling person to designate the audit committee for purposes of this administrative regulation, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers.

(b) Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the election.

(c) The election can be changed through notice to the commissioner by the insurer which shall include a description of the basis for the change.

(d) The election shall remain in effect for perpetuity, until rescinded.

(6)(a) The audit committee shall require the accountant that performs for an insurer any audit required by this administrative regulation to timely report to the audit committee in accordance with the requirements of SAS 114, "The Auditor's Communication With Those Charged With Governance", or its replacement, including:

1. All significant accounting policies and material permitted practices;

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

3. Other material written communications between the accountant and the management of the insurer, including any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance holding company system, the reports required by paragraph (a) of this subsection may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(7)(a) The proportion of independent audit committee members shall meet or exceed the following criteria:

1. For prior calendar year direct written and assumed premiums between \$0 and \$300,000,000, no minimum requirements;

2. For prior calendar year direct written and assumed premiums over \$300,000,000 to \$500,000,000, fifty (50) percent or more of members shall be independent; and

3. For prior calendar year direct written and assumed premiums over \$500,000,000; seventy-five (75) percent of members shall be independent.

(b) Notwithstanding subsection (7)(a) of this section, the commissioner may require the audit committee's board to enact improvements to the independence of the audit committee membership if the insurer:

1. Is in a risk-based capital action level in accordance with 806 KAR 3:190; or

2. Meets one or more of the standards of an insurer deemed to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer as set forth in KRS 304.2-065.

(c) An insurer with less than \$500,000,000 in prior year direct written and assumed premiums may structure its audit committee with at least a supermajority of independent audit committee members.

(d) For purposes of subsection (7)(a) of this section, prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(8)(a) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the commissioner for a waiver from the requirements of this section based upon hardship.

(b) The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners.

(c) If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National



Association of Insurance Commissioners, via the Web site, <https://www2.naic.org/servlet/Index>.

Section 14. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents. (1) A director or officer of an insurer shall not, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this administrative regulation; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this administrative regulation.

(2) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this administrative regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any of the following actions to coerce, manipulate, mislead or fraudulently influence an accountant with respect to the professional engagement period:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles as required by KRS 304.3-241, generally accepted auditing standards, or other professional or regulatory standards;

(b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

Section 15. Management's Report of Internal Control over Financial Reporting. (1)(a) Every insurer required to file an audited financial report pursuant to this administrative regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting.

(b) The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit.

(c) Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in subsection (1)(a) of this section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer:

(a) Is in any risk-based capital level event in accordance with 806 KAR 3:190; or

(b) Meets one or more of the standards of an insurer deemed to be in hazardous financial condition in accordance with KRS 304.2-065.

(3) An insurer or a group of insurers meeting the following requirements may file its or its parent's Section 404 Report and an addendum in satisfaction of the requirements of this section if those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurer's audited statutory financial statements were included in the scope of the Section 404 Report:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404, but is a SOX compliant entity; and

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity.

(4) Management's report of internal control over financial reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management shall not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer.

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of the documentation, in order to make its assertion in a cost effective manner and may include assembly of or reference to existing documentation.

**(b) Management's report on internal control over financial reporting, as required by this section, and any documentation provided in support of the report during the course of a financial examination, shall be kept confidential by the department.**

Section 16. Exemptions and Effective Dates. (1) Upon written application of any insurer, the commissioner[executive-director] may grant an exemption from compliance with any and all provision of this administrative regulation if the commissioner[executive-director] finds, upon review of the application, that compliance with this administrative regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted any time and from time to time for a specified period or periods. Upon denial of an insurer's written request for an exemption from this administrative regulation, the insurer may request a hearing on its application for an exemption pursuant to KRS 304.2-310.[Chapter 304.2]

(2) Domestic insurers retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall comply with this administrative regulation for the year ending December 31, 2010[1994], and each year thereafter unless the commissioner[executive-director] permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall meet the following schedule for compliance unless the commissioner[executive-director] permits otherwise:

(a) As of December 31, 2010[1994], file with the commissioner an audited financial report.[executive-director:

1. Report of independent certified public accountant;

2. Audited balance sheet; and

3. Notes to audited balance sheet.]

(b) For the year ending December 31, 2010[1994], and each year thereafter, these insurers shall file with the commission-

~~er[executive director]~~ all reports and communication required by this administrative regulation.

(4) Foreign insurers shall comply with this administrative regulation for the year ~~beginning December 31, 2010~~~~[January 1, 2010]~~~~[ending December 31, 1994]~~, and each year thereafter~~[, unless the executive director permits otherwise]~~.

(5)(a) The requirements of Section 13 of this administrative regulation shall be effective January 1, 2010.

(b) ~~An insurer or group of insurers that, pursuant to Section 13 of this administrative regulation, is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premiums is below the threshold and subsequently becomes subject to one (1) of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements in Section 6 of this administrative regulation.~~

(c) ~~An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements in Section 13 of this administrative regulation.~~

(6)(a) The requirements of Section 15 of this administrative regulation shall be effective beginning with the reporting period ending December 31, 2010 and each year thereafter.

(b) ~~An insurer or group of insurers that is not required to file an annual audit report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file an annual audit report.~~

(c) ~~An insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements in Section 4 of this administrative regulation.~~

Section 17.~~[44-]~~ Canadian and British Companies. (1) In the case of Canadian and British insurers, the annual audited financial reports shall be defined as the annual statement of total business in the manner filed by these insurers with their ~~[domiciliary]~~ supervisory authority duly audited by an independent chartered accountant.

(2) For Canadian and British insurers, the letter required by Section 5 of this administrative regulation shall state that the accountant is aware of the requirements relating to the annual audited financial report~~[statement]~~ filed with the ~~commissioner~~~~[executive director]~~ pursuant to Section 3 of this administrative regulation and shall affirm that the opinion expressed is in conformity with the requirements of Section 3 of this administrative regulation.

Section 18. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Financial Condition Examiner's Handbook", 2008, National Association of Insurance Commissioners.

(b) AU Section 561, "Subsequent Discovery of Facts Existing at the Date of the Auditor's Report" 1996 Professional Standards of the American Institute of Certified Public Accountants.

(c) SAS 114, "The Auditors Communication With Those Charged with Governance", 2007, American Institute of Certified Public Accountants.

(d) SAS 109, "Understanding the Entity and Its Environment and Assessing the Risks of material Misstatement", 2007 American Institute of Certified Public Accountants.

(e) SAS 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence", 2007 American Institute of Certified Public Accountants.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30p.m.

(3) Forms may also be obtained on the Department's Web site at <http://doi.ppr.ky.gov/kentucky>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at 11 a.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires annual filing of audited financial reports by insurers.

(b) The necessity of this administrative regulation: This administrative regulation will allow the Department of Insurance improved oversight of the financial condition of insurers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.3-240 authorizes the executive director to require additional information to the annual statement filed by insurers. This administrative regulation requires the annual filing of audited financial reports by insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will improve the Department of Insurance's oversight of the financial condition of insurers by requiring an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is based on the National Association of Insurance Commissioners' (NAIC) Annual Financial Reporting Model Regulation. This amendment adopts the updates to that model and amends agency names in accordance with Executive Order 2008-507.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to adopt the updates to the NAIC Annual Financial Reporting Model Regulation, which is a requirement for financial accreditation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.3-240 authorizes the executive director to require additional information to the annual statement filed by insurers. This amendment requires communication of internal control related matters noted in an audit and the filing of a report by management of internal control over financial reporting.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will improve the Department's financial oversight of insurers in that the provisions are intended to strengthen corporate governance, auditor independence and accountability in financial reporting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts approximately 2,200 licensed insurers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require the filing of additional financial reports related to internal controls with the annual audited financial statement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation is based on a model law from the National Association of Insurance Commissioners (NAIC) that is being adopted by all states as an accreditation standard. Further, it relates to business practices that many insurers already utilize. Therefore, the cost to comply with Kentucky's administrative regulation should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, regulated entities will be operating in a manner that will strengthen the accountability of their independent auditors and will provide more financial security to the policyholders of Kentucky.

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees.

(9) TIERING: Is tiering applied? All insurers are subject to this administrative regulation. However, insurers having direct premiums written in this state of less than one million dollars in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year may be exempt from the requirements for years in which those conditions exist.

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? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.3-240

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate:

The federal statute requiring promulgation of this administrative regulation is The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, 1968.

2. State compliance standards. The commissioner will not recognize an individual as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by any individual who has been convicted under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, 1968

3. Minimum or uniform standards contained in the federal mandate. The Racketeer Influenced and Corrupt Organizations Act provides for extended criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization.

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 prohibits an accountant from being recognized as a qualified independent certified public accountant if an individual has been convicted under the federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. As a consumer protection measure, the Department believes that an individual performing the duties of an independent certified public accountant on behalf of an insurer should be held to a high standard of trustworthiness. An individual who has been convicted under the federal Racketeer Influenced and Corrupt Organizations Act does not meet this standard.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 2008

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(As Amended at ARRS, November 12, 2008)

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) Program.

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund ~~[to administer the funds appropriated to the trust fund for the program]~~. KRS 164.7874(14) requires the Authority to determine the KEES curriculum's courses of study. KRS 164.7879(3)(c) requires the Authority to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(3) requires the Authority to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires the Authority to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the Authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the Authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the Authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" means a cooperative educational endeavor between secondary schools and colleges and universities administered by the College Board of the Educational Testing Service and recognized by KDE.

(5) "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where ~~the~~a student is currently enrolled.

(6) "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(7) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that ~~the~~a student is attending.

(8) "GED" means a general educational development diploma awarded to a student.

(9) "International baccalaureate course" means a course in a secondary education program sponsored by the International Baccalaureate Organization and recognized by the KDE in 704 KAR 3:340, Section 2(3)(b).

(10) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

(11) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky post-

secondary education institution; and  
(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the grade for the advanced placement or international baccalaureate course assigned shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F".

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1 and 2 and shall submit the "Home of Record Certification" to the Authority.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and

2. Requesting that the local school submit the information to the Authority using the "Curriculum Certification" Form and the "Data Submission" Form.

(b) ~~[The Authority.]~~ Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited out-of-state high school; and

3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;

(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

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(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the courses and electives required by this subsection.

(a) For a student enrolled in high school who is required to meet the curriculum standards in 704 KAR 3:305, Section 2, five (5) of the seven (7) electives required by 704 KAR 3:305, Section 2 shall be taken in the areas and according to the standards established in paragraph (b) of this subsection.

(b) The following subject areas and standards shall be applicable for electives. **[An elective in:]**

1. **A** social studies, science, mathematics, English/language arts, or arts and humanities **elective** shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.

2. **A** physical education or health **elective** shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.

3. **A foreign language elective****[Foreign languages]** shall be a course whose academic content includes teaching the spoken and written aspects of the language.

4. **An** agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways **elective** shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(14) shall be eligible to earn a KEES award for that year upon:

- (a) Completion of no fewer than three (3) courses of study; and
- (b) Satisfying the provisions of KRS 164.7879.

(4) A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:

(a) The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4:060, and the document "Academic Expectations" **that is incorporated by reference in 703 KAR 4:060**; or

(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate

course, dual credit course, or a course taken at a postsecondary education institution.

(5) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

- (a) Landscape architecture (04.0601); and
- (b) For students that graduated from high school not later than the 2004-2005 academic year, engineering **if[provided, however, that] enrollment in the engineering program is[shall be] continuous** (14.0101, 14.201, 14.0301, 14.401, 14.501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

- (a) Has not received eight (8) semesters of a KEES award;
- (b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:
  - 1. Pharm. D;
  - 2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or
  - 3. A program contained on the Equivalent Undergraduate Programs List; and
- (c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used:

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

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This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).  
January 1998

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's 18th birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

- (a) The parents meet the provisions of KRS 164.7879(2)(c)1 and 2;
  - (b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
  - (c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.
- (4) An eligible student who receives a GED diploma within five (5) years of attaining eighteen (18) years of age shall be eligible for a supplemental award if:

- (a) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (b) The student enrolls in a participating institution within five (5) years of receiving the GED diploma.

(5) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(6)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Administrative Responsibilities and Expenses of Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the

expenditures necessary to operate the program.

(3) The Authority shall develop an allotment schedule for the release of the administrative funds.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Home of Record Certification", June 2005;
- (b) "Curriculum Certification", June 2005;
- (c) "Data Submission", June 2005; and
- (d) "Equivalent Undergraduate Programs List", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY SHROAT, Chair

APPROVED BY AGENCY: August 20, 2008

FILED WITH LRC: September 11, 2008 at 2 p.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

### EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

#### 16 KAR 6:010. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the written examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall require the test or tests and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) Beginning September 1, 2009, an applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Interdisciplinary Early Childhood Education (0023)."

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Content Knowledge (0014)" with a passing score of 148.

(3) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take the content test or tests based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Middle School English and Communications: "Middle School English Language Arts (0049)" - 158;

(b) Middle School Mathematics: "Middle School Mathematics (0069)" - 148;

(c) Middle School Science: "Middle School Science (0439)" - 144; or

(d) Middle School Social Studies: "Middle School Social Studies (0089)" – 149.

(4) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology: "Biology: Content Knowledge (0235)" - 146;

(b) Chemistry: "Chemistry: Content Knowledge (0245)" - 147;

(c) Earth Science: "Earth and Space Sciences: Content Knowledge (0571)" - 147;

(d) English:

1. "English Language, Literature and Composition: Content Knowledge (0041)" - 160; and

2. "English Language, Literature and Composition Essays (0042)" - 155;

(e) Mathematics:

1. "Mathematics: Content Knowledge (0061)" - 125; and

2. "Mathematics: Proofs, Models and Problems, Part 1 (0063)" - 141;

(f) Physics: "Physics: Content Knowledge (0265)" - 133; and

(g) Social Studies:

1. "Social Studies: Content Knowledge (0081)" - 151; and

2. "Social Studies: Interpretation of Materials (0083)" - 159.

(5) An applicant for certification in all grades shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) Art:

1. "Art: Content Knowledge (0133)" - 158; and

2. "Art Making (0131)" - 154;

(b) French: "French: Content Knowledge (0173)" - 159;

(c) German: "German: Content Knowledge (0181)" - 157;

(d) Health: "Health Education (0550)" - 630;

(e) Integrated Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(f) Instrumental Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(g) Vocal Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

(h) Latin: "Latin (0600)" - 700;

(i) Physical Education:

1. "Physical Education: Content Knowledge (0091)" - 147; and

2. "Physical Education: Movement Forms-Analysis and Design (0092)" - 151;

(j) School Media Librarian: "Library Media Specialist (0310)" - 640;

(k) School Psychologist: "School Psychologist (0401)" – 161; or

(l) Spanish: "Spanish: Content Knowledge (0191)" – 160.

(6) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) Communication Disorders:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Speech-Language Pathology (0330)" - 600;

(b) Hearing Impaired:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Education of Deaf and Hard of Hearing Students (0271)" - 167;

(c) Hearing Impaired With Sign Proficiency:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157;

2. "Education of Deaf and Hard of Hearing Students (0271)" - 167"; and

3. One (1) of the following tests with a passing score of - Intermediate Level:

a. "Sign Communication Proficiency Interview (SCPI)"; or

b. "Educational Sign Skills Evaluation (ESSE)";

(d) Learning and Behavior Disorders:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" - 172;

(e) Moderate and Severe Disabilities:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Education of Exceptional Students: Severe to Profound Disabilities (0544)" - 156; or

(f) Visually Impaired:

1. "Education of Exceptional Students: Core Content Knowledge (0353)" - 157; and

2. "Teaching Students with Visual Impairments (0280)" - 700.

(7) An applicant for Career and Technical Education certification to teach in grades five (5) - twelve (12) shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) Agriculture: "Agriculture (0700)" - 520;

(b) Business and Marketing Education: "Business Education (0100)" - 590;

(c) Family and Consumer Science: "Family and Consumer Sciences (0121)" - 162;

(d) Technology Education: "Technology Education (0050)" - 600; or

(e) An applicant for Industrial Education shall take the content test or tests corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(8) An applicant for a restricted base certificate in the following area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0360)" - 620;

(b) Speech/Media Communications: "Speech Communication (0220)" - 580; or

(c) Theater: "Theatre (0640)" - 630.

(9) An applicant for an endorsement in the following content area or areas shall take the content test or tests based on the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) English as a Second Language: "English to Speakers of Other Languages (0360)" - 620;

(b) Learning and Behavior Disorders, grades eight (8) - twelve (12): "Education of Exceptional Students: Mild to Moderate Disabilities (0542)" – 172; or

(c) Gifted Education, grades preschool - twelve (12): "Gifted Education (0357)" – 152.

Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, the pedagogy tests and passing scores identified in this section shall be required for each new teacher applicant. If an individual is seeking additional certification in any area, the applicant shall only take one (1) of the pedagogy tests identified in this administrative regulation.

(1) An applicant for Elementary certification (grades preschool - five (5)) shall take "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)" - 161.

(2) An applicant for certification at the middle school level (grades five (5) through nine (9)) shall take "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)" - 161.

(3) An applicant for certification at the secondary level (grades eight (8) through twelve (12)) shall take "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(4) An applicant for certification in all grades with a content area (e.g., art, music, etc.) shall take either:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)" - 161;

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)" - 161; or



(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades five (5) through twelve (12) shall take either:

(a) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)" - 161; or

(b) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:

(a) "Principles of Learning and Teaching: Grades kindergarten - six (6) (0522)" - 161;

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)" - 161; or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)" - 161.

[Section 2. The Education Professional Standards Board shall require the test or tests and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate.

(1) An applicant for elementary certification shall take Elementary Education: Content Knowledge (0014) with a passing score of 148.

(3) An applicant for middle school certification shall take the middle school content test or tests based on the applicant's content area or areas with passing scores as identified in this subsection:

(a) Middle School Mathematics (0069) - 148;

(b) Middle School Science (0439) - 139;

(c) Middle School English Language Arts (0049) - 157; or

(d) Middle School Social Studies (0089) - 149.

(4) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take each content test or test based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Communication disorders:

1. Education of Exceptional Students: Core Content Knowledge (0353) - 157; and

2. Speech Language Pathology (0330) - 600;

(b) Learning and behavior disorders:

1. Education of Exceptional Students: Core Content Knowledge (0353) - 157; and

2. Education of Exceptional Students: Mild to Moderate Disabilities (0542) - 172;

(c) Moderate and severe disabilities:

1. Education of Exceptional Students: Core Content Knowledge (0353) - 157; and

2.a. Until August 31, 2007, Special Education: Teaching Students with Mental Retardation (0321) - 146;

b. Beginning September 1, 2007 and until August 31, 2008, Special Education: Teaching Students with Mental Retardation (0321) - 146 or Education of Exceptional Students: Severe to Profound Disabilities (0544) - 156;

c. Beginning September 1, 2008, Education of Exceptional Students: Severe to Profound Disabilities (0544) - 156;

(d) Hearing impaired:

1. Education of Exceptional Students: Core Content Knowledge (0353) - 157; and

2. Education of Deaf and Hard of Hearing Students (0271) - 167;

(e) Hearing impaired with sign proficiency:

1. Education of Exceptional Students: Core Content Knowledge (0353) - 157;

2. Education of Deaf and Hard of Hearing Students (0271) - 167; and

3. One (1) of the following tests with a passing score of "Intermediate Level":

a. Sign Communication Proficiency Interview (SCPI); or

b. Educational Sign Skills Evaluation (ESSE); and

(f) Visually impaired:

1. Education of Exceptional Students: Core Content Knowledge (0353) - 157; and

2. Teaching Students with Visual Impairments (0280) - 700.

(5) An applicant for certification at the secondary level shall take the content test or tests corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology: Content Knowledge (0235) - 146;

(b) Chemistry: Content Knowledge (0245) - 147;

(c) English:

1. English Language and Literature: Content Knowledge (0041) - 160; and

2. English Language, Literature and Composition Essays (0042) - 155;

(d) Social Studies:

1. Social Studies: Content Knowledge (0081) - 151; and

2. Social Studies: Interpretation of Materials (0083) - 159;

(e) Mathematics:

1. Mathematics: Content Knowledge (0061) - 125; and

2. Mathematics: Proofs, Models, and Problems (0063) - 141;

(f) Physics: Content Knowledge (0265) - 133; and

(g) Earth Science: Content Knowledge (0571) - 145.

(6) An applicant for certification in all grades in the following content area or areas shall take the content test or tests with the passing scores as identified in this subsection.

(a) Art:

1. Art Content Knowledge (0133) - 158; and

2. Art Making (0131) - 154;

(b) French: French: Content Knowledge (0173) - 159;

(c) German: German: Content Knowledge (0181) - 157;

(d) Health: Health Education (0550) - 630;

(e) Latin: Latin (0600) - 700;

(f) Integrated music:

1. Music: Content Knowledge (0113) - 154; and

2. Music: Concepts and Processes (0111) - 145;

(g) Vocal music:

1. Music: Content Knowledge (0113) - 154; and

2. Music: Concepts and Processes (0111) - 145;

(h) Instrumental music:

1. Music: Content Knowledge (0113) - 154; and

2. Music: Concepts and Processes (0111) - 145;

(i) Physical education:

1. Physical Education: Content Knowledge (0091) - 147; and

2. Physical Education: Movement Forms Analysis and Design (0092) - 151;

(j) Spanish: Spanish: Content Knowledge (0191) - 160;

(k) School Media Librarian: Library Media Specialist (0310) - 640; or

(l) School Psychologist: NTE Specialty Area Examination - 630.

(7) An applicant for career and technical education certification to teach in grades 5-12 with one (1) or more of the following specializations shall take the content test or tests with the passing scores as identified in this subsection:

(a) Agriculture: Agriculture (0700) - 520;

(b) Business and Marketing Education - Business Education (0100) - 590;

(c) Family and Consumer Sciences (0120) - 600;

(d) Technology Education - Technology Education (0050) - 600; or

(e) Industrial education. An applicant for industrial education with one (1) or more trade and industry specializations shall complete the assessments established in 16 KAR 6:020.

(8) An applicant for a restricted base certificate in the following content area or areas shall take the content test or tests with the passing scores identified in this subsection:

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- (a) English as a Second Language: English to Speakers of Other Languages (0360) – 620;
  - (b) Speech/Media Communications: Speech Communication (0220) – 580; or
  - (c) Theater: Theatre (0640) – 630.
- (9) An applicant for an endorsement in the following content area or areas shall take the content test or tests with the passing scores identified in this subsection:
- (a) English as a Second Language: English to Speakers of Other Languages (0360) – 620; or
  - (b) Learning and Behavior Disorders, grades 8-12: Education of Exceptional Students: Mild to Moderate Disabilities (0542) – 172.

Section 3. In addition to the content area test or tests established in Section 2 of this administrative regulation, the pedagogy tests and passing scores identified in this section shall be required for each new teacher applicant. If an individual is seeking additional certification in any area, the applicant shall only take one (1) of the pedagogy tests identified in this administrative regulation.

(1) An applicant for elementary certification (grades P-5) shall take Principles of Learning and Teaching: Grades K-6 (0522) – 161.

(2) An applicant for middle school certification grades five (5) through nine (9) shall take Principles of Learning and Teaching: Grades 5-9 (0523) – 161.

(3) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The content area test or tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(4) An applicant for certification at the secondary level grades eight (8) through twelve (12) shall take Principles of Learning and Teaching: Grades 7-12 (0524) – 161.

(5) An applicant for certification in all grades with a content area (e.g., art, music, etc.) shall take either:

(a) Principles of Learning and Teaching: Grades K-6 (0522) – 161;

(b) Principles of Learning and Teaching: Grades 5-9 (0523) – 161; or

(c) Principles of Learning and Teaching: Grades 7-12 (0524) – 161.

(6) An applicant for career and technical education certification in grades five (5) through twelve (12) shall take either:

(a) Principles of Learning and Teaching: Grades 5-9 (0523) – 161; or

(b) Principles of Learning and Teaching: Grades 7-12 (0524) – 161.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:

(a) Principles of Learning and Teaching: Grades K-6 (0522) – 161;

(b) Principles of Learning and Teaching: Grades 5-9 (0523) – 161; or

(c) Principles of Learning and Teaching: Grades 7-12 (0524) – 161.]

Section 4. Assessment Recency. (1) A passing score on a test established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established at the time of administration shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

- (a) The Educational Testing Service;

(b) [The Education Professional Standards Board for special administration; or

(c)] The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service or other authorized test administrator for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these tests.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: December 2, 2008 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2009 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, 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 February 2, 2009. 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: 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.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for teacher certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to teacher candidates of the assessment requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for ob-

taining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required teacher certification assessments and their corresponding minimum acceptable scores.

(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 corrects the name of the current school psychologist test, changes test scores for "Middle School English Language Arts (0049)," "Middle School Earth Science (0439)," and "Earth Science (0571)," and establishes the requirements for two additional tests, "Interdisciplinary Early Childhood Education-IECE (0023)" and "Gifted Education (0357)". The amendment also rescales the test code and score for "Family and Consumer Sciences (0121)" and "School Psychologist (0401)." Any other proposed changes to this regulation are designed to improve the clarity of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky teacher certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more closely aligns assessment options with teacher preparation program requirements and opportunities within an actual school setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 29 educator preparation programs, and educators seeking new and additional teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to the Education Professional Standards Board website for current assessment requirements. Applicants will need to continue to refer to the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The districts will be positively affected by a supply of teachers who are competent in their content area.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

#### 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, regional universities, and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and KRS 161.030

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be 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? There should be no revenue generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no revenue generated.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the testing requirements for teacher candidates to obtain certification.

#### PERSONNEL BOARD (Amendment)

##### 101 KAR 1:325. Probationary periods.

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e)[18A.0751(4)(e)] authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. KRS 18A.111 establishes requirements governing initial and promotional probationary periods for classified service. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appoint-

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ment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

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

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
1555	Resort Park Manager I	12 months
1556	Resort Park Manager II	12 months
1557	Resort Park Manager III	12 months
1584	Historic Site and Museum Manager	12 months
1585	Park Manager I	12 months
1586	Park Manager II	12 months
1588	Park Manager III	12 months
2001	Wildlife and Boating Law Enforcement Officer Recruit	12 months
2201	Correctional Officer	8 months
2301	Arson Investigator I	12 months
2302	Arson Investigator II	12 months
2305	Hazardous Devices Investigator	12 months
2308	Facilities Security Sergeant	12 months
2309	Facilities Security Lieutenant	12 months
2311	Facilities Security Officer I	12 months
2313	State Park Ranger Recruit	12 months
2322	Facilities Security Officer II	12 months
2330	KVE (Kentucky Vehicle Enforcement) Officer I	12 months
2350	Mounted Patrol Officer Recruit	12 months
2401	Police Telecommunicator I	12 months
2403	Police Telecommunicator II	12 months
2404	Police Telecommunications Shift Supervisor	12 months
2405	Police Telecommunications Supervisor	12 months
2408	KVE Inspector I	12 months
2410	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
2411	CJIS Compliance Specialist II	12 months
2412	CJIS Compliance Specialist III	12 months
2413	CJIS Compliance Supervisor	12 months
2415	Transportation Operations Center Specialist I	12 months
2433	Polygraph Examiner II	12 months
2434	Polygraph Examiner I	12 months
2468	Communications Dispatcher I	12 months
3254	Boiler Inspector I	12 months
3416	Financial Institutions Examiner I	12 months
3417	Financial Institutions Examiner II	12 months
3432	Financial Institutions Examiner III	12 months
3433	Financial Institutions Examiner IV	12 months
3434	Financial Institutions Examiner Specialist	12 months
3551	Insurance Fraud Investigator II	12 months
3553	Insurance Fraud Investigator Supervisor	12 months
4056	Firearms and Toolmark Examiner I	12 months
4058	Forensic Chemist I	12 months
4059	Forensic Chemist II	12 months
4061	Forensic Biologist I	12 months
4062	Forensic Biologist II	12 months
4080	Forensic Anthropologist	12 months
4140	Houseparent I	12 months
4141	Houseparent II	12 months
4550	Medical Investigator I	12 months
4551	Medical Investigator II	12 months
5120	Student Development Associate	12 months
5121	Student Development Assistant	12 months

5362	KSB/KSD (Kentucky School for the Blind/Kentucky School for the Deaf) Administrator I	12 months
5364	KSB/KSD Administrator III	12 months
5365	KSB/KSD Administrator IV	12 months
5366	KSB/KSD Administrator V	12 months
5367	KSB/KSD Administrator VI	12 months
6215	Disability Adjudicator I	12 months
6248	Juvenile Facility Superintendent I	12 months
6249	Juvenile Facility Superintendent III	12 months
6250	Facilities Regional Administrator	12 months
6251	Youth Services Program Supervisor	12 months
6252	Juvenile Facility Superintendent II	12 months
6267	Human Rights Field Supervisor	12 months
6290	Administrative Hearing Officer I	12 months
6292	Human Rights Enforcement Branch Manager	12 months
6296	Human Rights Research/Information Compliance Supervisor	12 months
6297	Human Rights Housing Compliance Supervisor	12 months
6298	Human Rights Employment/Public Accommodations Compliance Supervisor	12 months
6299	Human Rights Compliance Enforcement Officer II	12 months
6401	Youth Worker I	12 months
6404	Youth Worker Supervisor	12 months
6410	Juvenile Services District Supervisor	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester I	12 months
7222	Forester II	12 months
7224	Forester III	12 months
7226	Forester District	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7235	Forestry Program Manager	12 months
7236	Forestry Program Supervisor	12 months
7250	Forest Ranger Technician I	12 months
7251	Forest Ranger Technician II	12 months
7252	Forest Ranger Technician III	12 months
7253	Forest Ranger Technician District	12 months
8326	Right-of-way Agent I	12 months
9520	Revenue Audit Supervisor	12 months
9531	Revenue District Manager	12 months
9534	Revenue Field Operations Regional Manager	12 months
9816	Public Advocate Investigator I	12 months
9859	Environmental Administrative Hearing Officer	12 months
9866	Mitigation Specialist I	12 months
9885	Investigator I	12 months

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

(4) If an applicant is appointed to a position from a competitive register, the appointment shall be considered an initial appointment.

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

reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

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

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

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

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2009, at 9 a.m. at the Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2009, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Mark A. Sipek, Executive Director, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 564-1693.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mark A. Sipek

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the positions for which an initial probationary period in excess of six (6) months is required.

(b) The necessity of this administrative regulation: To establish the appropriate probationary periods for classifications throughout state government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(4)(e) requires the Personnel Board to promulgate an administrative regulation listing the job classifications for which an initial probationary period in excess of six (6) months is required.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the positions for which an initial probationary period in excess of six (6) months is required.

(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 for a new initial probationary period of twelve months for Houseparent I, Houseparent II, Student Development Assistant, KSB/KSD Administrator

I, KSB/KSD Administrator III, KSB/KSD Administrator IV, KSB/KSD Administrator V, and KSB/KSD Administrator VI. This amendment also restores the position of Revenue Audit Supervisor, Revenue District Manager, and Revenue Field Operations Regional Manager to a 6-month initial probationary period.

(b) The necessity of the amendment to this administrative regulation: Secretary of the Personnel Cabinet has recommended changes to the classifications for which an initial probationary period in excess of six (6) months is required.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consists of changes to the list of classifications for which an initial probationary period in excess of six (6) months is required.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to meet state agency needs and allow for longer probationary periods for Houseparent I, Houseparent II, Student Development Assistant, KSB/KSD Administrator I, KSB/KSD Administrator III, KSB/KSD Administrator IV, KSB/KSD Administrator V, and KSB/KSD Administrator VI in order for the Department of Education to monitor the employee's progress. This amendment is also necessary to reduce the probationary period for Revenue Audit Supervisor, Revenue District Manager, and Revenue Field Operations Regional Manager due to ability to recruit and retain qualified personnel in the Department of Revenue.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state employees appointed to the listed classifications, and the state government agencies that employ them.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Education will be able to more fully observe the job performance of initial probationary employees in the affected classifications to determine if those employees should gain status in the classified system. The Department of Revenue will be better able to recruit and retain personnel in the affected positions by having a shorter initial probationary period.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? This regulation must apply equally to all classified employees in all state agencies with classified employees.

#### 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 department, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire department, 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 department, or school districts) for the first full year the regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire department, 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 department, 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**  
**Department of Revenue**  
**Office of Sales and Excise Taxes**  
**(Amendment)**

**103 KAR 27:130. Printing and related industries.**

RELATES TO: KRS 139.010~~[139.050, 139.090, 139.100, 139.110, 139.120, 139.130]~~

STATUTORY AUTHORITY: KRS 131.130, 139.710~~[Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administration regulation is necessary to interpret the sales and use tax law as it relates to printing and related industries.

Section 1. The tax applies to retail sale charges for printing, lithography, photolithography, rotogravure, gravure, silk screen printing, imprinting, multilithing, multigraphing, ~~[mimeographing,]~~ photostats, steel die engraving, screen imaging, digital imaging, and similar operations now in existence or later devised for consumers regardless of whether or not the paper and other materials are furnished by the consumer.

Section 2. The tax applies to retail sales charges for services in connection with the sale of printed matter, such as die cutting, embossing, folding, and other binding and finishing operations regardless of whether or not the said printed matter is furnished by the customer. Other taxable charges included with the sale of printed material are costs of postage, addressing, enclosing, sealing, preparing for mailing, or mailing. Tax also applies to charges for envelopes.

~~[Section 3. The tax does not apply to additional charges for postage or for addressing, enclosing, sealing, preparing for mailing, or mailing letters or other printed matters provided such charges are stated separately on the invoices and in the accounting records. Tax applies, however, to charges for envelopes.]~~

Section 4. ~~Charges for typography or type composition are not taxable provided that title thereto is not conveyed by the typesetter to the customer. The retention of title by the typographer or typesetter will be presumed when the typographer's or typesetter's books and records reflect the return of the type metal by issuance of credit slips and maintenance of proper records. The furnishing of reproduction or galley proofs for no additional charge does not render taxable the charge for the typography or type composition.~~

~~Charges for reprints or proofs in quantity are classified as charges for printed matter and are subject to tax.]~~

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 23, 2009 at 10 a.m. in Room 149 in the Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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. Written comments shall be accepted through February 2, 2009. 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: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Richard Dobson, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it relates to printing and related industries.

(b) The necessity of this administrative regulation: This administrative regulation updates the types of printing and industries to which the regulation applies in conformity with Streamlined Sales Tax statutes and acknowledges that it encompasses all future technological advances in the industries.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 139.710 authorizes the Department of Revenue to administer taxes imposed under KRS Chapter 139. KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation updates a regulation applying sales tax to printing industries.

(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 number of new printing processes to the regulation and combines an unnecessary section with a similar subject above.

(b) The necessity of the amendment to this administrative regulation: KRS 139.710 authorizes the Department of Revenue to administer taxes imposed under KRS Chapter 139. KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is necessary to conform the regulation to KRS 139.010(4)(a)4 which includes delivery charges within the definition of gross receipts.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will give applicable taxpayers greater guidance as to how the sales and use tax applies to the printing industries.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation.

tive regulation: This administrative regulation will affect the Department of Revenue and those working in the printing industry.

(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 actions are required other than to note the amendment of the regulation and to continue compliance with statutory provisions that expanded the definition of gross receipts, effective July 1, 2004.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) Compliance will avoid underpayment or overpayment of tax.

(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 regulation will aid the taxpayers in knowing which purchases are subject to tax.

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

(a) Initially: Nothing beyond costs attributed to ordinary administrative duties.

(b) On a continuing basis: Nothing beyond costs attributed to ordinary administrative duties.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No funding is necessary outside normal budget provisions.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all taxpayers in the regulated industry.

#### 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 Finance and Administration Cabinet, Department of Revenue, Office of Sales and Excise Taxes, Division of Sales and Use Tax

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A, KRS 131.130, and 139.710 authorize the action taken by this regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment of this administrative regulation should have no impact on revenue because the correct application of sales and use tax is provided by statute.

(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. Any costs will be covered in normal operating costs.

(d) How much will it cost to administer this program for subsequent years? Nothing. Any costs will be covered in normal operating 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:

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

#### 105 KAR 1:370. Kentucky Retirement Systems Personnel Policies.

RELATES TO: KRS 61.645(9)(c), (d), (g)

STATUTORY AUTHORITY: KRS 61.645(9)(d), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires 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 61.645(9)(c) provides that, effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board of trustees. KRS 61.645(9)(d) requires the board of trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. These policies and procedures are incorporated by reference to comply with the provisions of KRS 61.645(d). This administrative regulation establishes the "Kentucky Retirement Systems Personnel Policies".

Section 1. Incorporation by Reference. (1) The "Kentucky Retirement Systems Personnel Policies", as amended November 20, 2008~~[May 15, 2008]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: November 20, 2008

FILED WITH LRC: December 12, 2008 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 26, 2009, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 19, 2009, 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 January 31, 2009. 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: Jennifer A. Jones, 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 Jennifer A. Jones:

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive 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: This amendment is to restore the language in Sections 7.10(6), [then 7.09(6)] and Section 8.04(1) as it was in the "Kentucky Retirement Systems Personnel Policies" as amended August 17, 2006 and November 16, 2006. The sections were not meant to be amended by board in the "Kentucky Retirement Systems Personnel Policies" as amended May 15, 2008 and must be corrected.

(b) The necessity of the amendment to this administrative regulation: This amendment is to restore the language in Sections 7.10(6), [then 7.09(6)] and Section 8.04(1) as it was in the "Kentucky Retirement Systems Personnel Policies" as amended August 17, 2006 and November 16, 2006. The sections were not meant to be amended by board in the "Kentucky Retirement Systems Personnel Policies" as amended May 15, 2008 and must be corrected.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.645(9)(d) requires the Board of Trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy.

(d) How the amendment will assist in the effective administration of the statutes: The board will be able to administer the correct version of Sections 7.10(6), [then 7.09(6)] and Section 8.04(1) "Kentucky Retirement Systems Personnel Policies".

List the type and number of individuals, businesses, organizations, or state

and local governments affected by this administrative regulation:

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment to the administrative regulation, establishing the "Kentucky Retirement Systems Personnel Policies," will affect the 251 employees of the Kentucky Retirement Systems.

(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): The employees will be working under correct version of Sections 7.10(6), [then 7.09(6)] and Section 8.04(1) "Kentucky Retirement Systems Personnel Policies".

(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 estab-

lishes 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:

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

**201 KAR 2:230. Special limited pharmacy - central refill pharmacy.**

RELATES TO: KRS 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020 requires that prescription drugs, medicines, and pharmaceuticals be dispensed or manufactured by a licensed pharmacist. KRS 315.035 requires that all pharmacies hold a permit issued by the board. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those pharmacies that package, label and distribute refill prescriptions to pharmacies in the Commonwealth.

Section 1. Definition. "Central refill pharmacy" means a pharmacy located in the Commonwealth that provides packaging, labeling and delivery of a refill prescription product to another pharmacy [in the Commonwealth] for the purpose of the refilling of a valid prescription.

Section 2. The central refill pharmacy shall:

(1) Either:

(a) Have a written contract with the pharmacy which has custody of the original prescription authorization for refill dispensing; or

(b) Be under common ownership with that pharmacy;

(2) Prepare the label for the refill prescription product which clearly identifies the name and address of the pharmacy preparing the product for refill dispensing and the name and address of the



pharmacy that will receive the prepared product for dispensing to the patient;

(3) In addition to its obligation to maintain complete and accurate records of drug products received and otherwise disposed of, maintain complete and accurate records of the preparation of the refilled prescription product, including the name of the:

(a) Pharmacist who verified the accuracy of the refilled prescription product;

(b) Pharmacy preparing the refilled prescription product; and

(c) Pharmacy to which the prepared refill prescription product is delivered;

(4) Provide the originating pharmacy with written information that describes how a patient may contact the central refill pharmacy if the patient has any questions about the preparation of the prescription refill; and

(5) Be responsible for ensuring that the order has been properly prepared and verified by a pharmacist.

Section 3. The pharmacy to which a prepared prescription refill product is delivered shall:

(1) In addition to its obligation to maintain complete and accurate records of drug products received and otherwise disposed of, maintain complete and accurate records of the receipt and dispensing of the centrally refilled prescription product, including the name of the:

(a) Pharmacist who verified the accuracy of the refilled prescription product prior to its dispensing; and

(b) Pharmacy preparing the refilled prescription product;

(2) Be responsible for ensuring that the refill has been properly prepared, packaged and labeled;

(3) Provide the patient with written information that described how a patient may contact either:

(a) The central refill pharmacy if the patient has any questions about the preparation of the prescription refill; or

(b) the dispensing pharmacy if the patient has any questions about the use of the medication; and

(4) Be responsible for adherence to the requirements of 201 KAR 2:210.

W. MICHAEL LEAKE, President

APPROVED BY AGENCY: November 14, 2008

FILED WITH LRC: December 12, 2008 at 10 a.m.

PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 9 a.m. at the Board's office, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by January 20, 2009, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30p.m. Monday February 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows a pharmacy located in the Commonwealth to provide packaging, labeling and delivery of a refill prescription product to another pharmacy under common ownership for the purpose of the refilling of a valid prescription.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.191(1)(a).

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for a pharmacy located in the Commonwealth to refill prescriptions for another pharmacy under common ownership.

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

(a) How the amendment will change this existing administrative regulation: This will allow a pharmacy located in the Commonwealth to refill prescriptions from another pharmacy located if under common ownership.

(b) The necessity of the amendment to this administrative regulation: A pharmacy located within the Commonwealth will be able to refill prescriptions from another pharmacy located if under common ownership.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment delineates the procedure for a central refill pharmacy.

(d) How the amendment will assist in the effective administration of the statutes: It will clearly state the procedure for a central refill pharmacy to refill prescriptions from pharmacies under common ownership.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that this will affect three pharmacies located in the Commonwealth.

(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 pharmacies located in the Commonwealth will be able to refill prescriptions for pharmacies if under common ownership.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The pharmacy located in the Commonwealth will be able to assist pharmacies in the refilling of prescriptions.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacies located in the Commonwealth.

#### 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

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2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy 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 315.191(1)(a) requires or authorizes the action taken by this administrative regulation.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Kentucky State Board Of Hairdressers  
And Cosmetologists  
(Amendment)**

**201 KAR 12:105. School districts.**

RELATES TO: KRS 317A.060(1)(a)

STATUTORY AUTHORITY: KRS 317A.030(1), 317A.060(1)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS

317A.060(1)(a) requires the board to promulgate administrative regulations. This administrative regulation establishes beauty school divisions within Congressional Districts. [The six (6) Congressional Districts provide an equal division for the location of beauty schools. The number of eight (8) per Congressional District would allow all districts to have an equal number of schools.]

Section 1. To protect the public and implement the provisions of KRS Chapter 317A, the state ~~shall be~~~~[is hereby]~~ divided into six (6) districts the same as the United States Congressional Districts and shall change ~~if~~~~[when]~~ the Congressional Districts are ~~[properly]~~ changed. ~~[At all times these districts shall remain in conformity with these Congressional Districts.]~~

(1) District 1. ~~Fulton, Hickman, Carlisle, Ballard, McCracken, Graves, Marshall, Calloway, Livingston, Crittenden, Lyon, Trigg, Caldwell, Union, Webster, Hopkins, Christian, Henderson, McLean, Muhlenberg, Todd, Logan, Butler, Ohio, Cumberland, Simpson, Allen, Monroe, Russell, Clinton, and Adair County excluding that precinct in District 2.~~

(2) District 2. ~~Daviess, Warren, Barren, Edmonson, Hart, Grayson, Hancock, Breckinridge, Meade, Hardin, Larue, Marion, Washington, Nelson, Bullitt, Spencer, Green, Metcalf, Taylor, Casey, Adair County excluding those precincts in District 1, Lincoln County excluding those precincts in District 6, and Jefferson County excluding District 3.~~

(3) District 3. ~~Louisville and Jefferson County precincts presently constituting United States Third Congressional District of Kentucky.~~

(4) District 4. ~~Oldham, Trimble, Carroll, Gallatin, Boone, Kenton, Campbell, Grant, Henry, Owen, Pendleton, Shelby, Bracken, Robertson, Mason, Fleming, Lewis, Rowan, Greenup, Carter, Elliott, Boyd, Lawrence County excluding those precincts in District 5, and Nicholas County excluding those precincts in District 6.~~

(5) District 5. ~~Pulaski, Wayne, Rockcastle, McCreary, Lee, Jackson, Laurel, Whitley, Owsley, Clay, Knox, Bell, Leslie, Harlan, Menifee, Morgan, Johnson, Wolfe, Magoffin, Floyd, Pike, Breathitt, Knott, Letcher, Perry, Marion, and Lawrence County excluding those precincts in District 4.~~

(6) District 6. ~~Franklin, Scott, Woodford, Mercer, Boyle, Harrison, Bourbon, Fayette, Clark, Anderson, Madison, Montgomery, Nicholas County excluding those precincts in District 4, Garrard, Jessamine, Powell, Estill, Bath, and Lincoln County excluding those precincts in District 2.]~~

Section 2. For the protection of the public good and welfare, for the public's protection against misrepresentation, deceit or fraud in the teaching of beauty culture, a new license for a school of cosmetology shall not be issued ~~that may~~~~[which would]~~ cause any district, as ~~established~~~~[defined]~~ in Section 1 of this administrative regulation, to have more than ~~twenty (20)~~~~[eight (8)]~~ schools of cosmetology.

Section 3. (1) ~~A school~~~~[Schools]~~ of cosmetology presently existing and licensed or hereafter licensed, shall not ~~[be permitted to]~~ move or transfer from one (1) ~~Congressional~~ District to another ~~[district, as defined in Section 1 of this administrative regulation,]~~ without ~~an~~ application being ~~approved by~~~~[made to and approval received from]~~ the board.

(2) ~~A school~~~~[Schools]~~ of cosmetology presently existing and licensed, or hereafter licensed, shall not be permitted to move or transfer from one (1) district to another district~~[, as defined in Section 1 of this administrative regulation,]~~ if the move or transfer would cause the district to have more than ~~twenty (20)~~~~[eight (8)]~~ schools of cosmetology as provided in Section 2 of this administrative regulation.

Section 4. Sections 1 through 3 of this administrative regulation shall not be construed to prevent the issuance or the reissuance of a license to an existing beauty school.

Section 5. This administrative regulation controls the location of private schools only.

REGINA WEBB, Chair

APPROVED BY AGENCY: December 8, 2008

FILED WITH LRC: December 11, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 28, 2009 at 10 a.m. at the Board's office, 111 St. James Court, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 21, 2009, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 5:00 p.m. on January 30, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Wilma May, Executive Director, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Ct., Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Wilma May

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the location and housing of cosmetology schools and the number of licenses for schools in the state. This subsection does not apply to the instructional programs in cosmetology in the state area vocational schools.

(b) The necessity of this administrative regulation: This regulation is necessary because KRS 317A.160(1)(b) requires the board to promulgate an administrative regulation to address the number of licenses for schools in the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the board to promulgate an administrative regulation to address the number of licenses for schools in the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation affords educational opportunity to all potential cosmetology students in every congressional district.

(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 change to the regulation increases the number of schools throughout the state.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to increase the number of licenses for schools in the state.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires administrative regulations governing the location of cosmetology schools and the number of licenses for schools in the state.

(d) How the amendment will assist in the effective administration of the statutes: The amendment increases the number of licenses for schools in the state. The board may not consider additional licenses without increasing the number currently set at eight (8) per congressional district.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses 48 private schools. We anticipate that the opening of new schools will stimulate the economy by allowing schools in areas that currently do not offer cosmetology programs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no changes required of existing schools. New schools will make application pursuant to the requirements of law.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All schools will be encouraged to offer the best education possible by employing good instructors and setting high standards for the operation of the school. Students will have more choice about where to acquire an education. The Commonwealth may enjoy the benefits of increased revenue.

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

(a) Initially: There may be an increase in staff cost to review additional applicants and inspect additional schools.

(b) On a continuing basis: There may be an increase in staff cost to review additional applicants and inspect additional schools.

(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 for implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable 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? The Kentucky State Board of Hairdressers and Cosmetologists 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 317A.060(1) requires to the board to promulgate an administrative regulation to address the number of licenses for schools in the state.

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. Kentucky Board of Hairdressers and Cosmetology will receive license fees.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The annual license fee of \$1500 for each new school. It is unknown how much city or county revenue may be generated from allowing more schools to operate in the state.

(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 annual license fee of \$1500 for each school. It is unknown how much municipal or state revenue may be generated from allowing more schools to operate in the state.

(c) How much will it cost to administer this program for the first year? The fees incurred are travel expenses to do a site inspection, staff time to consider approval of the school when it is ready to open, and inspection costs.

(d) How much will it cost to administer this program for subsequent years? No additional expenses will be incurred from those normally budgeted.

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

Revenues (+/-): There is an annual license fee of \$1500 per school and potential revenue to state and local governments as a result of the additional businesses that may open within the state.

Expenditures (+/-): Very little expense will be incurred. Inspectors already cover the entire state.

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (Amendment)

##### 201 KAR 16:015. Fees.

RELATES TO: KRS 321.193, 321.195, 321.201, 321.207, 321.211, 321.221

STATUTORY AUTHORITY: KRS 321.193(2), 321.211

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193(2) and 321.211 require the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians. This administrative regulation establishes the application, examination, and renewal fees.

Section 1. Application Fees. (1) The application fee for a licensed veterinarian shall be \$100.

(2) The application fee for a veterinary technician or a veterinary technologist shall be twenty-five (25) dollars.

Section 2. Examination Fees. (1) The fee for the North American Veterinary Licensing Examination shall be paid directly to the National Board of Veterinary Medical Examiners.

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(2) The fee for the state examination shall be \$100.

(3) The fee for the veterinary technician or technologist examination shall be \$100.

Section 3. Renewal Fees and Penalties for a Veterinarian, Veterinary Technician, and Veterinary Technologist. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The biennial renewal fee for licensure as a veterinarian shall be ~~\$200~~[\$100] if paid by September 30.

(2) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for licensure as a veterinarian shall be ~~\$300~~[\$200].

(3) The renewal fee for reinstatement of licensure as a veterinarian after November 30 shall be ~~\$400~~[\$300].

(4) The renewal fee for renewal of licensure as a veterinary technologist or technician shall be thirty (30) dollars.

(5) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for renewal of licensure as a veterinary technologist or technician shall be forty (40) dollars.

(6) The renewal fee for reinstatement of licensure as a veterinary technician or technologist after November 30 shall be fifty (50) dollars.

Section 4. Special Permit Fee. The fee for a special permit shall be fifty (50) dollars.

Section 5. Fee for Issuance of Certification for a Certified Animal Control Agency and a Certified Animal Euthanasia Specialist.

(1) The fee for issuance of a certificate to an animal control agency shall be fifty (50) dollars.

(2) The fee for issuance of a certificate to a certified animal euthanasia specialist shall be fifty (50) dollars.

Section 6. Renewal of Certification for a Certified Animal Control Agency and a Certified Animal Euthanasia Specialist. (1) Each certified animal control agency and certified animal euthanasia specialist shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. A certificate not renewed by March 1 of each year shall expire based on the failure to renew in a timely manner.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency or certified animal euthanasia specialist may continue to function and may renew the certificate upon payment of a late fee of sixty (60) dollars.

(3) A certificate not renewed before May 1 shall terminate based on the failure to renew in a timely manner. Upon termination, the certificate is no longer valid in the Commonwealth.

(4) After the sixty (60) day grace period, a certificate that has been terminated may be reinstated upon payment of a reinstatement fee of seventy-five (75) dollars.

(5) The renewal fee for the first renewal shall be waived for a certificate received within 120 days prior to the renewal date.

This is to certify that the Chair of the Kentucky Board of Veterinary Examiners executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 321.

PERRY W. WORNALL, DVM

APPROVED BY AGENCY: November 20, 2008

FILED WITH LRC: November 20, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2008 at 4 p.m., local time, at the Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 February 2, 2009. 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: Barbara Rucker, Administrative and Support Services Section Supervisor, Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 564-3296 ext. 224, fax (502) 696-1899.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a fee structure for application, examination and renewal fees.

(b) The necessity of this administrative regulation: The necessity of this regulation is to create a fee structure for Board operations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to set fees. The board is given the authority to promulgate regulations per KRS 13A.100 and 321.235 (3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Board to efficiently license veterinary examiners.

(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 amended administrative regulation provides a fee increase to renewal and reinstatement fees for veterinarians.

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation is necessary to be in-line with other states' licensing entities.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of the authorizing statute by updating a fee structure for Board operations.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will not impact efficiency of Board operations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 2,250 license renewals for veterinarians on a biennial basis and approximately 100 license reinstatements for veterinarians on a biennial basis.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure will have to comply with KRS Chapter 321 and 201 KAR Chapter 16.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each licensed veterinarian shall pay a renewal fee of \$200 biennially. Each licensed veterinarian shall pay a reinstatement fee of \$400, after termination of license.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): This regulation will allow qualified applicants who meet statutory and regulatory criteria to practice.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(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: See answer to (6) (b) above.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See answer to (4) (b) above.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants and license holders.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts those individuals who voluntarily renew or reinstate their licenses as veterinarians, and thus are governed by the Kentucky Board of Veterinary Examiners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 321 and 201 KAR Chapter 16.

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? Currently there are approximately 2,250 veterinarians in the Commonwealth of Kentucky. Multiplied by the increase in renewal fees of \$100, the additional revenue generated will amount to \$225,000 biennially. Currently there are approximately 100 veterinarians in the Commonwealth who reinstate their licenses biennially. Multiplied by the increase in reinstatement fee(s) of \$100, the additional revenue generated will amount to \$10,000 biennially.

(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? See answer above.

(c) How much will it cost to administer this program for the first year? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

(d) How much will it cost to administer this program for subsequent years? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

#### GENERAL GOVERNMENT CABINET Board of Physical Therapy (Amendment)

##### 201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 327.050, 327.060, 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13), 327.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine whether physical therapist applicants meet the qualifications and standards required by KRS Chapter 327, and 327.040(13) allows the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the

criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. Applications shall be accepted for credentialing based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. To be eligible for the examination, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(2) Submit certification of completion by the educational administrator of that program;

(3) Have completed an educational course at least two (2) hours in length which has been approved by the Cabinet for Health Services (CHS) on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS;

(4) Submit a completed application for credentialing;

(5) Submit the correct fee as required in 201 KAR 22:135; and

(6) Register for the examination.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the Federation of State Boards of Physical Therapy (FSBPT) Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for credentialing by endorsement, the applicant shall:

(1) Meet the requirements established in Section 2(1), (3), (4), and (5) of this administrative regulation;

(2) Have successfully completed the examination and register with the FSBPT to have results submitted to Kentucky.

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993 shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75).

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600.

(c) Other examinations as determined by the board may be approved in lieu of, or in addition to, the NPTE;

(3) Have an active credential in this profession in another jurisdiction; and

(4) Have verification of credentials showing the credential has never been revoked, suspended, on probation or under disciplinary review in another jurisdiction.

Section 5. To be eligible for reinstatement the applicant shall meet the requirements in 201 KAR 22:040.

Section 6. A credential issued by the board shall be in effect until March 31 of the next uneven-numbered year.

Section 7. Incorporation by Reference. (1) "Application for Credentialing 11/20/2008~~[11/20/2007]~~", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Physical Therapy, Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLU.S.C.H, Executive Director

APPROVED BY AGENCY: November 15, 2008

FILED WITH LRC: December 10, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

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January 21, 2009 at 9 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 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 February 2, 2009. 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: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the eligibility and application procedures for Physical Therapists and Physical Therapist Assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the qualifications and procedures for applying for a license to practice physical therapy in the state of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the qualifications and procedures for applying for a license to practice physical therapy in the state of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates a new application form.

(b) The necessity of the amendment to this administrative regulation: To clarify the questions on the application.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the application for licensing requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no change to regulated entities identified in question (3), only a revised application.

(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 the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The application is being revised to clarify the term "conviction" as defined in KRS 327.040.

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

(a) Initially: There will be minimal costs to the board.

(b) On a continuing basis: Minimal costs to the board.

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

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

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

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

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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? Physical therapists and physical therapists assistants credentialed by the Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and KRS 327.050

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. No effect

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### GENERAL GOVERNMENT CABINET Board of Physical Therapy (Amendment)

**201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.**

RELATES TO: KRS 164.772, 214.610(1), 327.050(8), (9), 327.070

STATUTORY AUTHORITY: KRS 327.040(10), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate administrative regulations for the effectuation of the purposes of KRS Chapter 327, and 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes the requirements and procedures for the renewal and reinstatement of credentials.

Section 1. A credential shall be renewed upon:

(1) Payment of the renewal fee established in 201 KAR 22:135 on or before March 31st of each uneven numbered year;

(2) Submission of the completed Renewal Application;

(3) Verification of continued competence as set forth in 201 KAR 22:045;

(4) In accordance with the course requirement in KRS 327.050(8), verification of completion of a Cabinet for Health Ser-

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vices (CHS) approved two (2) hour course on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS, pursuant to KRS 214.610(1) but not more than every ten (10) years. The course shall be completed within the renewal biennial period that it is due; and

(5) Verification that, since the last renewal period, the credential holder has not:

(a) Been in violation of KRS 327.070;

(b) Had any professional license or credential disciplined or under current disciplinary review in this state or any other jurisdiction;

(c) Had a civil claim made against the credential holder which related to the credential holder's practice of physical therapy; or

(d) Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772 effective 7/15/02.

Section 2. Credentials not renewed by the board by March 31 of each uneven numbered year shall lapse.

Section 3. A credential holder who has a credential that has lapsed less than three (3) years may reinstate upon:

(1) Meeting the requirements of Section 1(2) through (5) of this administrative regulation for the current renewal period; and

(2) Submission of payment of the reinstatement fee established in 201 KAR 22:135.

Section 4. A credential holder who has a credential that has lapsed greater than three (3) years may reinstate upon:

(1) Meeting the requirements of Section 3;

(2) Submission of all credentials from any jurisdictions since last renewal; and

(3) If not holding a current credential, the board may require any of the following:

(a) Submission of evidence of professional competency;

(b) An agreement to practice physical therapy under supervision not to exceed six (6) months; or

(c) Successful completion of the board approved examination.

Section 5. (1) "Renewal Application 11/15/2008[8/14/06]", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLU.S.C.H, Executive Director

APPROVED BY AGENCY: November 15, 2008

FILED WITH LRC: December 10, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2009 at 9 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 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 February 2, 2009. 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: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the renewal and reinstatement procedures for Physical Therapists and Physical Therapist Assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for renewal of a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.

(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 the reinstatement and the renewal process on the renewal application.

(b) The necessity of the amendment to this administrative regulation: To clarify requirement for reinstatement or renewal of a credential holder.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of reinstatement or renewal of a credential holder in the state of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4200 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no change to regulated entities identified in question (3), only a revised renewal application.

(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 the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The renewal application is being revised to clarify the term "conviction" as defined in KRS 327.040.

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

(a) Initially: There will be minimal costs to the board.

(b) On a continuing basis: Minimal costs to the board.

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

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

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

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

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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? Physical therapists and physical therapists assistants credentialed by the Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and KRS 327.050

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. No effect.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Board of Physical Therapy  
(Amendment)**

**201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.**

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040 (12) and (13) authorize the Board of Physical Therapy to establish by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

Section 1. Code of Ethical Standards. (1) Physical therapists and physical therapist assistants shall:

(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise and experience;

(c) Report to the board any violation of KRS Chapter 327 or 201 KAR Chapter 22 within thirty (30) days; and

(d) Report to the board any civil judgment or claim made against a credential holder relating to their physical therapy practice within thirty (30) days.

(2) Physical therapists and physical therapist assistants shall not:

(a) Verbally or physically abuse a client; and

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing.

Section 2. Standards of Practice for the Physical Therapist. When engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for additional evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy related services.

(2) Evaluate each patient:

(a) Prior to initiation of any treatment;

(b) Upon receipt of a patient from another physical therapy service, facility or agency; and

(c) If requested by a referring professional;

(3) Refer the patient to other professionals or services when the treatment or service is beyond his scope of practice;

(4) Be responsible for the physical therapy record of each patient;

(5) Provide services that meet or exceed the generally accepted practice of the profession;

(6) Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;

(7) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those;

(8) Disclose in writing to each patient any financial interest or compensation or other value to be received by the referral source:

(a) For services provided by the physical therapist;

(b) For equipment rental or purchase; and

(c) For other services the physical therapist might recommend for the patient.

(9) Unless prohibited by law, as members of a business entity be allowed to pool or apportion fees received in accordance with any business agreement.

Section 3. Standards of Practice for the Physical Therapist Assistant. When engaged in the practice of physical therapy the physical therapist assistant shall:

(1) Provide services only under the supervision and direction of a physical therapist;

(2) Refuse to carry out procedures that he believes are not in the best interest of the patient or that he is not competent to provide by training or skill level;

(3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of supervision established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change which occurs in the patient's condition which may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 4(3)(i)-(l) of this administrative regulation, and communicate to the appropriate parties.

Section 4. Standards for Supervision. When supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

(1) (a) At all times, including all work locations, be limited to:

1. Supervising no more than four (4) full-time physical therapist assistants or supportive personnel; or

2. The number of those persons providing part-time patient care for a period equivalent to that provided by four (4) full-time providers of patient care.

(b) Temporary failure to abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section for a period not to exceed seven (7) consecutive work days shall not constitute a violation of this standard.

(2) Not delegate procedures or techniques to the physical therapist assistant or supportive personnel if it is outside their scope of training, education or expertise.

(3) Be responsible for:

(a) Interpreting any referral;

(b) Conducting the initial physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant and supportive personnel;



(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Insuring that if supportive personnel provide direct patient care that there is on site supervision by a physical therapist or physical therapist assistant;

(g) Insuring that physical therapy students fulfilling the clinical education requirements of a CAPTE accredited program shall receive on-site supervision by a physical therapist;

(h) Insuring that physical therapist assistant students fulfilling the clinical education requirements of a CAPTE accredited program shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;

(i) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(j) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year. During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

(k) Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;

(l) Reassessing a patient whose medical condition has changed; and

(m) Establishing discharge planning for patients who require continued physical therapy.

Section 5. Standards for Documentation. The physical therapist is responsible for the physical therapy record of a patient. The physical therapy record shall consist of:

(1) The initial evaluation, a written or typed report signed and dated by the physical therapist performing the evaluation which shall include:

(a) Pertinent medical and social history;

(b) Subjective information;

(c) Appropriate objective testing;

(d) Assessment, which may include problems, interpretation, and a physical therapy diagnosis identifying the nature and extent of the patient's impairment; and

(e) Plan of care, including:

1. Treatment to be rendered;

2. Frequency and duration of treatment; and

3. Measurable goals.

(2) Progress notes, which are written or typed, signed and dated by the person rendering treatment, and countersigned and dated by the physical therapist if written by supportive personnel, physical therapist students, physical therapist assistant students, or examination candidates. The progress notes shall include:

(a) A current record of treatment;

(b) Patient's adverse response to treatment;

(c) Any factors affecting treatment; and

(d) Data obtained by all objective tests performed.

(3) Reassessment, which is written or typed, signed and dated by a physical therapist. This reassessment shall be in compliance with Section 4(3)(i) through (l) of this administrative regulation:

(a) If the physical therapist is treating the patient, these reports may be incorporated into the progress notes.

(b) If a physical therapist assistant or supportive personnel are treating the patient, the report shall be a separate entry into the record.

(c) A reassessment shall include directly observed objective, subjective, and medical data necessary for the revision or reaffirmation of the plan of care and measurable goals.

(4) Discharge summary, which is a written or typed, signed, and dated statement.

(a) A physical therapist assistant may write the discharge summary which shall be countersigned by the responsible physical therapist;

(b) The discharge summary shall include:

1. Date of discharge;

2. Reason for discharge;

3. Physical therapy status upon discharge; and

4. A discharge plan, which includes any recommendations the physical therapist has regarding the need for continuing physical therapy.

5. A discharge summary shall be written within thirty (30) days of the end of the current plan of care when no subsequent plan of care has been established.

(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist or a physical therapist candidate granted a temporary permit by the board: "PT". Appropriate designations for a masters degree or doctoral degree of physical therapy may follow "PT";

(b) If written by a physical therapist's assistant or a physical therapist's assistant examination candidate granted a temporary permit by the board: "PTA";

(c) If written by supportive personnel: "PT Aide", or "Physical Therapy Aide" or "PT Tech"; and

(d) If written by a student: "Physical Therapist Student" or "PT Student"; "Physical Therapist's Assistant Student" or "PTA Student".

REBECCA KLU.S.C.H, Executive Director

APPROVED BY AGENCY: November 15, 2008

FILED WITH LRC: December 10, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2009 at 9 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 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 February 2, 2009. 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: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the code of ethical standards and standards of practice for Physical Therapists and Physical Therapist Assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the standards of practice for credential holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It outlines the ethical conduct and standards of practice for credential holders.

(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 the criteria of when a discharge summary should be written.

(b) The necessity of the amendment to this administrative regulation: To clarify discharge summaries and gives guidelines of when they should be written.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for the practice of physical therapy.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of writing discharge summaries.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4200 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no change to regulated entities identified in question (3), only a clarification.

(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 the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarification.

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

(a) Initially: No costs to the board.

(b) On a continuing basis: No costs to the board.

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

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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? Physical therapists and physical therapists assistants credentialed by the Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and KRS 327.050

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. No effect.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky State Board of Licensure for Marriage and Family Therapists (Amendment)

#### 201 KAR 32:020. Equivalent course of study.

RELATES TO: KRS 335.330(1), (2)

STATUTORY AUTHORITY: KRS 335.320(9), 335.330(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330(3) provides that the board shall define a course of study equivalent to a master's degree in marriage and family therapy and promulgate the equivalency standard by administrative regulations. This administrative regulation defines the criteria for the equivalent course of study.

Section 1. An applicant for licensure as a marriage and family therapist shall:

(1) Comply with the requirements of KRS 335.330; and

(2) Submit an application on the "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate" form.

(3) An applicant who has completed a Commission on Accreditation of Marriage and Family Education masters or doctoral degree program in a related field such as psychology, clinical psychology, community mental health, social work, professional counseling, or other degree approved by the board, in addition to what is required in KRS 335.330(1), may count experiential and clinical supervision hours earned in a Commission on Accreditation of Marriage and Family Education masters or doctoral degree program towards meeting the experiential and clinical supervision requirements for licensure per KRS 335.330(2).

Section 2. The basic core areas which are necessary in order to qualify as an equivalent course of study, shall include the following:

(1) Marriage and family studies. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area shall be theoretical in nature and have a major focus of system theory orientation, and may include:

(a) Systems theory;

(b) Family development;

(c) Blended families;

(d) Cultural issues in families;

(e) Family subsystems;

(f) Major models of family systems theory; or

(g) Gender issues in families.

(2) Marriage and family therapy. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area shall have a major focus on family systems theory and systemic therapeutic interventions. Courses shall relate to major theories of family systems change and therapeutic practices evolving from each theoretical model. Examples may include:

(a) Structural communications family therapy;

(b) Strategic object relations family therapy;

(c) Behavioral family therapy;

(d) Intergenerational family therapy;

(e) Solution oriented family therapy;

(f) Narrative family therapy; or

(g) Systemic sex therapy.

(3) Human development. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area provide knowledge of individual human personality development in both normal and abnormal manifestations. Topic areas may include:

(a) Human development;

(b) Personality theory;

(c) Human sexuality; or

(d) Effects of gender and cultural issues on human development.

(4) Psychopathology and Diagnostic and Statistical Manual of Mental Disorders. This area shall include a one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses in this area should cover psychopathology, diagnosis through use of the Diagnostic and Statistical Manual of Mental Disorders, or applications of the Diagnostic and Statistical Manual of Mental Disorders to marriage and family therapy.

(5) Professional studies. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses may include:

- (a) Professional ethics in marriage and family therapy;
  - (b) Legal responsibilities of the therapist;
  - (c) Professional socialization and the role of the professional organization;
  - (d) Licensure or certification legislation; or
  - (e) Independent practice issues.
- (6) Research. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses may include:

- (a) Statistics;
- (b) Research methods;
- (c) Quantitative methodology; or
- (d) Other courses designed to assist the student to understand and perform research.

(7) Practicum or internship. The practicum or internship shall include a minimum of one (1) year or 300 hours of supervised direct client contact with individuals, couples and families for family therapy.

(a) Applicants who did not complete a clinical practicum in graduate school may satisfy the practicum requirement with their first 300 post masters' client contact hours.

(b) These hours shall not be counted toward the two (2) years of required post master's experience or the 200 hours of clinical supervision.

Section 3. A course used to fulfill one (1) of the requirements set forth in Section 2 of this administrative regulation shall not be used to fulfill more than one (1) of the basic core area requirements.

Section 4. (1) Applicants who completed their qualifying graduate degree in a mental health field prior to 1985 may substitute conferences, workshops, seminars, or in-service training related to marriage and family therapy attended or presented as a substitute for college coursework required in Section 2 of this administrative regulation.

(2) Forty-five (45) contact hours of relevant content shall equal three (3) semester hours of credit.

(3) A list of equivalencies the applicant wishes to have considered shall be organized by core area as set forth in Section 2 of this administrative regulation.

(4) Appropriate documentation shall include:

- (a) Date;
- (b) Title;
- (c) Course description;
- (d) Sponsoring organization;
- (e) Presenter, including presenter's qualifications;
- (f) Number of contact hours attended or presented; and
- (g) Certificates of attendance.

Section 5. Other acceptable equivalencies may be considered as follows:

(1) One (1) graduate level course taught on a subject relevant to marriage and family therapy after 1985 may be considered equivalent to three (3) semester hours of credit.

(2) Publication on a subject relevant to marriage and family therapy dated after 1985 may be submitted as equivalencies as acceptable to the board. Credit shall be granted as follows:

(a) A chapter in a book is equivalent to three (3) semester hours of credit. An applicant who authors or edits a book may be given credit equivalent to six (6) semester hours of credit. An appli-

cant shall submit a copy of the title page, table of contents and bibliography.

(b) Publication in a professional refereed journal is equivalent to three (3) semester hours of credit. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 6. Clinical membership in the American Association for Marriage and Family Therapy plus documentation of coursework in psychopathology and the Diagnostic and Statistical Manual of Mental Disorders shall be accepted as evidence that the applicant has met both the educational and experiential requirements for licensure as set forth in KRS 335.330(3) and (4)(a) and (b).

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2009, at 3 p.m., local time, at the Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) weekdays 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 February 2, 2009. 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: Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows applicants to count hours earned for experience and clinical supervision in masters or doctoral programs in related fields, so they do not have to duplicate those efforts.

(b) The necessity of this administrative regulation: The necessity of this regulation is to encourage applicants with requisite training and experience to apply for licensure in the marriage and family therapy field.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance related to certification requirements pursuant to KRS 335.330 (2)(a)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Board to consider experiential and clinical supervision hours for applicants who have a second masters or doctoral degree, towards certification.

(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 amended administrative regulation allows appli-

cants to count hours earned for experience and clinical supervision in masters or doctoral programs in related fields, so they do not have to duplicate those efforts.

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation is necessary to encourage applicants with varying experiential and clinical supervision in related fields, thus creating differing perspectives within the field of marriage and family therapy.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of the authorizing statutes by allowing experiential and clinical supervision hours from related professions, which is in line with the Board's discretion to judge the experience and clinical supervision requirements of applicants pursuant to KRS 335.330 (2)(a)(b).

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will potentially increase the number of licensed marriage and family therapists available to render services to the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately fifty (50) applicants for associate status and thirty (30) applicants for full licensed status annually. There are approximately 614 license holders (both types) in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure will have to comply with KRS 335.330.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each associate applicant will have to pay the initial application fee of fifty (50) dollars and fifty (50) dollars renewal and each applicant for licensed marriage and family therapist will have to pay the initial application fee of \$225 and \$150 for renewal. This amended administrative regulation will save the applicants money by not incurring additional expenses to pay for clinical supervision.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): This regulation will allow qualified applicants who meet statutory and regulatory criteria to practice marriage and family therapy.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants and license holders.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation directly impacts those individuals who voluntarily apply as a licensed marriage and family therapist, and thus are governed by the Kentucky Board of Marriage and Family Therapists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.330, 335.320 (9), and 201 KAR 32:020.

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? Current licensing fees for approximately 50 applicants for associate status and 30 applicants for full licensed status annually. There are approximately 614 license holders (both types) in the Commonwealth of Kentucky. Each associate applicant will have to pay the initial application fee of \$50 and \$50 renewal and each applicant for licensed marriage and family therapist will have to pay the initial application fee of \$225 and \$150.

(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? See answer above.

(c) How much will it cost to administer this program for the first year? The Board carries out its statutory duties utilizing the fees paid by the license holders. No state monies are appropriated.

(d) How much will it cost to administer this program for subsequent years? The Board carries out its statutory duties utilizing the fees paid by the license holders. No state monies are appropriated.

#### GENERAL GOVERNMENT CABINET Kentucky State Board of Licensure for Marriage and Family Therapists (Amendment)

#### 201 KAR 32:025. Marriage and family therapist associate.

RELATES TO: KRS 335.332

STATUTORY AUTHORITY: KRS 335.320, 335.332(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.332(3) requires the board to promulgate administrative regulations establishing the fees and other requirements for a marriage and family therapist associate permit. This administrative regulation establishes the requirements for marriage and family therapist associates.

Section 1. Marriage and Family Therapist Associate Application and Renewal. (1) A person desiring to be a marriage and family therapist associate shall apply for and submit to the board an "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate" with a fee of fifty (50) dollars for the first year. The initial application shall include a copy of a supervisory contract with the designated supervisor for approval by the board.

(2) An annual renewal fee of fifty (50)~~twenty-five (25)~~ dollars for each subsequent year shall be submitted to the board. Contract renewal and extension shall be granted in accordance with Section 4 of this administrative regulation.

(3) An associate desiring to renew his permit shall file a completed "Associate Permit Renewal Form" and the completed supervisory log to accompany the fee set forth in subsection (2) above.

(4) Associates who fail to renew their permit before their expiration date shall have thirty (30) days to pay the renewal fee of fifty (50) dollars plus a late fee of twenty (20) dollars for a total of seventy (70) dollars. The fee shall be postmarked on or before the end of the thirty (30) day grace period in accordance with the expiration date indicated on the renewal form. Failure to renew the permit in a timely manner as set forth above shall result in termination of the permit.

Section 2. Supervisory Contract. (1) Prior to beginning a

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course of supervision for the purpose of meeting licensure requirements, a marriage and family therapist associate shall contract with an approved supervisor in writing.

(2) The approved supervisor shall enter into a "Plan of Supervision for Clinical Marriage and Family Therapy Experience" with a person who meets the criteria for becoming a marriage and family therapist associate.

(3) The approved supervisor shall be responsible for the marriage and family therapist associate's development and the welfare of the clients served by the marriage and family therapist associate in accordance with the code of ethics set forth in 201 KAR 32:050 and the provisions in 201 KAR 32:035.

(4) If a new supervisory contract is entered into with a different supervisor, approval shall be obtained from the board. When a supervision contract is terminated, the approved supervisor has thirty (30) days to notify the board in writing that he is no longer the supervisor of record. The marriage and family therapist associate has thirty (30) days from the date of termination to submit the new supervisory contract to the board.

Section 3. Contract Information. The supervisory contract between the marriage and family therapist associate and the approved supervisor shall contain the following information:

(1) The name of the marriage and family therapist associate;

(2) The name and license number of the approved supervisor of record;

(3) The name and license number of other approved supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients to be seen;

(b) Therapies and treatment modalities which shall be used including the prospective length of treatment; and

(c) Problems or conditions which shall be treated;

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Amount of group and individual supervision; and

(c) Methodology for transmission of case information;

(7) The conditions or procedures for termination of the supervision; and

(8) A statement that:

(a) The approved supervisor of record understands that he shall be held accountable to the board for the care given to the marriage and family therapist associate's clients; and

(b) The approved supervisor of record and other supervisors meet the criteria established in existing administrative regulations.

Section 4. Contract Renewal and Extension. (1) Upon approval of the board, a supervisory contract shall be issued for a term of one (1) year.~~three (3) years.~~

(2) ~~At the conclusion of the original three (3) year term, the marriage and family therapist associate may request that a supervisory contract be renewed for a period of one (1) year.~~

(3) ~~If a marriage and family therapist associate is unable to complete the requirements of the contract and wishes to retain his permit, he shall request a one (1) year extension.~~

(4) ~~There shall not be a limit on the number of extensions that may be granted a marriage and family therapist associate.~~

(3) At the time of associate permit renewal, the supervisory contract shall be reaffirmed by written correspondence from the supervisor of record or a new supervisor contract supplied by the applicant.

Section 5. [Clinical Supervision. (1) Clinical supervision shall:

(a) ~~Be equally distributed throughout the qualifying period;~~

(b) ~~Be clearly distinguishable from psychotherapy, didactic enrichment or training activities;~~

(c) ~~Focus on raw data from the supervisee's current clinical work made available to the supervisor; and~~

(d) ~~Be direct, face-to-face contact between the supervisor and supervisee.~~

(2) The supervision process shall focus on:

(a) ~~Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as set forth in the Diagnostic and Statistical Manual of Mental Disorders;~~

(b) ~~Development of treatment skills appropriate to the therapeutic process;~~

(c) ~~Development of sensitivity to context and issues relating specifically to the family or individual being counseled;~~

(d) ~~Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;~~

(e) ~~Increased theoretical and applied knowledge for the therapist;~~

(f) ~~Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and~~

(g) ~~Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.~~

(3) ~~Oral and written reports shall not constitute more than fifty (50) percent of raw data used for direct, face-to-face clinical supervision.~~

(4) ~~Interactive video shall not exceed fifty (50) hours raw data used for direct, face to face.~~

(5) ~~Any alternative format of direct, face-to-face clinical supervision shall receive prior approval of the board.~~

(6) ~~Groups of up to six (6) persons, behind a one (1) way mirror, may receive credit for group supervision if an approved supervisor is present and students are actively participating in the session. Up to two (2) students seeing a client on the other side of the one (1) way mirror may concurrently receive client contact and individual supervision hours if the approved supervisor is actively supervising the session.~~

(7) ~~In a therapy session involving a supervisor and supervisee:~~

(a) ~~The roll of the approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session.~~

(b) ~~The supervisees may receive credit for client contact hours and supervision hours.~~

(8) ~~An individual supervisee may present a videotape in group supervision with an approved supervisor. The individual supervisee may receive group supervision hours if not more than five (5) additional students are present. The additional students may also receive group supervision credit if they are actively involved in the process.~~

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

(a) "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate", (2008 Edition)[(6/17/99 Edition)]; and

(b) "Plan of Supervision for Clinical Marriage and Family Therapy Experience", (2008 Edition)[Revised 5/07/04];

(c) "Associate Permit Renewal Form." (2008 Edition); and

(d) "Marriage and Family Therapist Associate Supervision Log", (2008 Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2009, at 3 p.m., local time, at the Kentucky State

Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 February 2, 2009. 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:** Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and fees for marriage and family therapist associates.

(b) The necessity of this administrative regulation: The necessity of this regulation is to set forth the minimum standards and fees for marriage and family therapist associates to place applicants on notice of the requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to promulgate administrative regulations establishing the fees and other requirements for a marriage and family therapist associate permit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the board to establish the criteria and fees for issuance of an associate permit.

(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 amended regulation clarifies information relative to the supervision contracts for marriage and family therapist associates. It also deletes information relative to supervisor requirements as this information will be placed in a new administrative regulation dedicated solely to this topic.

(b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary to clarify the requirements for marriage and family therapists associates' supervision contracts.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to the content of the authorizing statute by setting forth the minimum standards and fees for issuance of a marriage and family therapist associate permit.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation will clearly define and set forth the fees and requirements for the associate permits which will result in less confusion for applicants and fewer inquiries to the Board office.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 150 marriage and family therapist associates renew annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This amended regulation requires mar-

riage and family therapist associates to file an Associate Permit Renewal Form. It also requires the supervisors to notify the Board when a supervision contract is terminated and gives the associate thirty days from the date of termination to submit a new supervision contract. The term of a supervision contract has been shortened from three years to one year and shall be reaffirmed each year when the associate renews their permit. Specific supervision requirements have been removed from this administrative regulation and placed in a new regulation 201 KAR 32:035.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The annual renewal fee for marriage and family therapist associates is \$50.00. A thirty day grace period permits the associate to renew for \$70.00. After expiration of the grace period, the permit is terminated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended regulation will assist applicants in meeting the requirements of the Board to qualify for a marriage and family therapist associate permit and maintaining the permit once issued.

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

(a) Initially: No additional costs are anticipated.

(b) On a continuing basis: No additional costs are anticipated.

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

(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: Annual renewal fee increased from \$25 to \$50. An additional \$20 will be assessed for licensees who renew within the 30-day grace period.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Annual renewal fee increased from \$25 to \$50. An additional \$20 will be assessed for licensees who renew within the 30-day grace period.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally by statute to all applicants for marriage and family therapist associate permits.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists is housed for administrative purposes within the Division of Occupations and Professions in the Finance and Administration Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320, 335.332(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.

(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? An additional \$25 to the existing renewal fee, multiplied by the 150 licensees who renew annually will amount to \$3,750.

(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? See 4(a) above

(c) How much will it cost to administer this program for the first year? No costs are associated with administering this program. The board is funded by the licensure fees it charges.

(d) How much will it cost to administer this program for subsequent years? See 4(c) above.

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### GENERAL GOVERNMENT CABINET Kentucky State Board of Licensure for Marriage and Family Therapists (Amendment)

#### 201 KAR 32:030. Fees.

RELATES TO: KRS 335.330, 335.340(1), (3)

STATUTORY AUTHORITY: KRS 335.320(4), 335.330, 335.340(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets all fees for licenses as a marriage and family therapist and marriage and family therapist associate. KRS 335.330 requires the board to promulgate an administrative regulation establishing the initial fee for licensure required to be paid by an applicant for licensure and requires an applicant to pass a written examination prescribed by the board. KRS 335.340(1) requires that all licenses issued under KRS 335.330 shall be renewed annually, and that the board promulgate an administrative regulation establishing the fee for licensure renewal. KRS 335.320(4) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 335. KRS 335.340(3) requires the board to promulgate an administrative regulation establishing the late renewal fee. KRS 335.340(3) requires the board to establish procedures for reinstatement of expired licenses.

Section 1. Initial Application Fee. The initial application fee for licensure as a marriage and family therapist shall be fifty (50) dollars. Said fee is nonrefundable and shall be paid by check or money order made payable to the Kentucky State Treasurer.

Section 2. Initial Licensure Fee. The initial fee for licensure as a marriage and family therapist shall be \$175. Said fee is nonrefundable and shall be paid by check or money order made payable to the Kentucky State Treasurer[\$150].

Section 3. Examination Fee. An applicant shall pass the "National Marital and Family Therapy Examination" administered and verified by Professional Examination Service. The applicant shall pay the required examination fee directly to Professional Examination Service.

Section 4. Renewal Fee. A licensed marriage and family therapist shall submit a completed license renewal application form to the board in accordance with KRS 335.340. The fee for renewal of licensure as a marriage and family therapist shall be \$150[\$140] annually. Said fee is nonrefundable and shall be paid by check or money order payable to the Kentucky State Treasurer.

Section 5. Late Renewal Fees. Any licensee who renews his license during the ninety (90) day grace period provided by KRS 335.340(3) shall pay a late renewal fee of seventy-five (75)[fifty (50)] dollars in addition to the payment of the renewal fee as set forth in Section 4 of this administrative regulation. Said fee is nonrefundable and shall be paid by check or money order payable to the Kentucky State Treasurer.

Section 6. Reinstatement of Expired License. (1) An expired license may be reinstated by:

(a) Submitting a completed "License Reinstatement form";

(b) Payment of the renewal fee as set forth in Section 4 of this administrative regulation for each year since the date of last active licensure;

(c) Payment of a reinstatement fee of \$100. Said fee is nonrefundable and shall be paid by check or money order payable to the Kentucky State Treasurer; and

(d) Meeting all other requirements of this section.

(2) The applicant for reinstatement of an expired license shall submit proof of completion of fifteen (15) hours of continuing education for each year since the date of last active licensure.

Section 7. Fees for Sponsors of Continuing Education. There shall be a fee of twenty-five (25) dollars for each continuing education application submitted by a sponsor. For sponsors submitting

multiple applications in one (1) month, the fee shall not exceed \$250.

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

(a) "License Renewal Application", (2008); and

(b) "License Reinstatement Application", (2008).["License Reinstatement Form" (2004) Kentucky Board of Licensure for Marriage and Family Therapists, is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2009, at 3 p.m., local time, at the Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 February 2, 2009. 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: Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for initial licensure, renewal and reinstatement for marriage and family therapists and marriage and family therapist associates.

(b) The necessity of this administrative regulation: The necessity of this regulation is to place applicants and licensees on notice of the fees associated with licensure and the requisite forms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to establish the initial fee for licensure, the renewal fee and the reinstatement fee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the board to establish the fees for applicants for licensure, renewal and reinstatement, thereby adding clarity to the procedures.

(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 incorporates by reference the form for

annual renewal of licensure and raises some fees to enable the board to continue administering its statutory duties.

(b) The necessity of the amendment to this administrative regulation: KRS Chapter 13A requires that administrative agencies file their forms with the Legislative Research Commission. This must be accomplished through the amendment of the administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amended administrative regulation conforms by complying with the requirements of KRS Chapter 13A. The substance of the administrative regulation is unchanged.

(d) How the amendment will assist in the effective administration of the statutes: Filing the form places the public on notice of the requirements for renewal and enables the board to remain compliant with all statutory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are 38 new applicants for marriage and family therapist associate annually; 31 new applicants for marriage and family therapist; 150 active licensed marriage and family therapist associates; and 465 active licensed marriage and family therapists in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This amended administrative regulation clarifies that all of the fees charged by the board are non-refundable. The regulation also incorporates by reference the updated forms associated with renewal and reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial application for licensure as a marriage and family therapist remains \$50. The initial licensure fee increased twenty-five dollars to \$175. The annual renewal fee for a marriage and family therapist increased forty dollars to \$150. The fee for renewal during the grace period is increased to \$225. The reinstatement fee is \$100 plus the annual renewal fee for each year since the date of last active licensure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended regulation will assist applicants for initial licensure and renewal by specifying the fees associated with licensure and making available the updated renewal and reinstatement forms.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(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 to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation directly increases several existing fees; see answer to (4) (b).

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants for licensure and renewal or reinstatement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists is housed for administrative purposes within the Division of Occupations and Professions in the Finance and Administration Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(4), 335.330, 335.340(1), (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.

(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 board's operations are funded by the licensure fees it charges. This revenue will not flow through to any other state, local or federal agency. However, the Board will receive an additional \$25 for renewal for 150 associate renewals (\$3,750) and an additional \$25 for initial licensure of therapists (\$775) and an additional \$25 renewal for 465 therapists (\$11,625).

(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? See 4(a) above

(c) How much will it cost to administer this program for the first year? See 4(a) above

(d) How much will it cost to administer this program for subsequent years? See 4(a) above

**GENERAL GOVERNMENT CABINET**  
**Kentucky State Board of Licensure for Marriage and**  
**Family Therapists**  
**(Amendment)**

**201 KAR 32:070. Complaint procedure.**

RELATES TO: KRS 335.348

STATUTORY AUTHORITY: KRS 335.325, 335.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.348 delineates the causes for which disciplinary action may be taken against a licensee. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 335; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 335, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint and in addition to board members the executive director of the board or another staff member may be appointed to serve on this committee.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disci-



plinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity.

(b) Shall be:

1. In writing; and
2. Signed by the person offering the complaint.

(c) May be filed by the board based upon information in its possession.

(2) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS Chapter 335 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee. A copy of the written admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in his permanent file. Alternatively, the licensee may file a request for a hearing with the board within thirty (30) days of the admonishment. Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B. The formal complaint shall be processed in accordance with KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 335.305(1), it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.305(1);

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.305(1) with a request that appropriate action be taken under KRS 335.399; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.305.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel and the complaint screening committee may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice and Service of Process. A notice required by KRS Chapter 335 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 335.350 with the exception of a written admonishment issued pursuant to Section 4(3) of this administrative regulation; and

(2) An action to restrain or enjoin a violation of KRS 335.305(1).

Section 8. Incorporation by Reference. (1) "Complaint Form and Instructions", (2008), Kentucky Board of Licensure for Marriage and Family Therapists, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2009, at 3 p.m., local time, at the Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 February 2, 2009. 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:** Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the filing, evaluation, and disposition of administrative complaints.

(b) The necessity of this administrative regulation: The necessity of this regulation is to place licensees on notice of the procedures to be followed when a complaint is filed with the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to take disciplinary action against a licensee for violation of the statutes and administrative regulations governing the practice of marriage and family therapy in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows the board to establish the procedures for handling complaints against licensees and taking disciplinary action where appropriate. Thus, clarity is added to the procedures and reduces the number of inquiries to the board and staff.

(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 incorporates by reference the form for filing a complaint against a licensee.

(b) The necessity of the amendment to this administrative regulation: KRS Chapter 13A requires that administrative agencies file their forms with the Legislative Research Commission. This must be accomplished through the amendment of the administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amended administrative regulation conforms by complying with the requirements of KRS Chapter 13A. The substance of the administrative regulation is unchanged.

(d) How the amendment will assist in the effective administration of the statutes: Filing the form places the public on notice of the procedures for, and associated with, filing a complaint against a licensee and enables the board to remain compliant with all statutory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 150 licensed marriage and family therapist associates and 465 licensed marriage and family therapists.

(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 the administrative regulation or amendment: When a complaint is filed against a licensee, the licensee is expected to file a response and cooperate with the investigation. In the event the board decides to hold an administrative hearing, this administrative regulation sets forth the procedures that will be followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A licensee may appear with legal counsel or pro se in matters pending before the board. Therefore, it is impossible to place a dollar amount on the cost of defending charges before the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended regulation will assist individuals who wish to file a complaint with the board by making available a standardized complaint form. It also provides information

regarding the procedures followed by the board beginning with the receipt of a letter of complaint through investigation, settlement and hearing.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(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 to implement this amended administrative regulation.

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

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

#### 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 150 associates and 465 therapists licensed by the Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 335 and 201 KAR 32.

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? N/A.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A.

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

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

#### GENERAL GOVERNMENT CABINET Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (Amendment)

##### 201 KAR 33:020. Renewals.

RELATES TO: KRS 310.050

STATUTORY AUTHORITY: KRS 310.041, 310.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050

provides that the board shall promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. Regular Renewal. (1) A licensed dietitian or certified nutritionist shall annually, before November 1, pay to the board the renewal fee established by 201 KAR 33:010, Section 2, for the renewal of the license or certificate.

(2) If a license or certificate is not renewed before November 1 of each year, it shall expire.

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(3) Compliance with continuing education requirements shall be documented as provided by 201 KAR 33:030.

Section 2. Late Renewal and the Grace Period. (1) A sixty (60) day grace period shall be allowed beginning November 1, during which a licensee or certificate holder may renew his or her license or certificate upon payment of the renewal fee plus the late renewal fee established by 201 KAR 33:010, Section 2.

(2)(a) A licensee or certificate holder may continue to practice during the sixty (60) day grace period;

(b) Upon request of the employer, a licensee or certificate holder practicing in accordance with paragraph (a) of this subsection shall present evidence of a valid pre-existing license or certificate.

(3) A person requesting renewal of a certification during the sixty (60) day grace period shall comply with the continuing education requirements as required by KRS 310.050(3) and as specified by 201 KAR 33:030.

Section 3. Automatic Revocation. Upon revocation, a licensee or certificate holder shall:

(1) No longer be eligible to practice in the Commonwealth; and

(2) May be sent notice at the last known address available to the board that license or certificate has been revoked and that he or she shall cease and desist practice.

Section 4. Licensure and Certification Reinstatement. After the sixty (60) day grace period, a license or certificate, which has been automatically revoked due to failure to renew, shall be reinstated if the licensee or certificate holder has:

(1) Paid the renewal fee plus a reinstatement fee as set forth by 201 KAR 33:010; and

(2) Documented that he or she has complied with the continuing education requirements established by 201 KAR 33:030.

This is to certify that the Chair of the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 310.

CHERYL BENTLEY

APPROVED BY AGENCY: November 20, 2008

FILED WITH LRC: November 20, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2009, at 3 p.m., local time, at the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 February 2, 2009. 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: Barbara Rucker, Administrative and Support Services Section Supervisor, Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a mechanism for the renewal of licenses.

(b) The necessity of this administrative regulation: The necessity of this regulation is to create an efficient manner by which licenses are renewed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to set fees. The board is given the authority to promulgate regulations per KRS 13A.100 and 310.041 (1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Board to efficiently process renewals.

(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 amended administrative regulation clarifies that if a licensee fails to renew, his/her license will be revoked without notice, pursuant to KRS 310.050 (4).

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation is necessary to create a renewal process for licensees.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of the authorizing statute by setting forth a mechanism to administer renewal applications, which is required in the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will clarify in regulation, the intent of KRS 310.050 (4).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 1,069 dietitians and 73 nutritionists in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure will have to comply with KRS 310 and 201 KAR 33.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to licensees. The amendment allows the Division to send out notices of revocation.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): This regulation will allow qualified applicants who meet statutory and regulatory criteria to practice and to renew their licenses.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants and license holders.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts those individuals who renew licenses, thus are governed by the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 31 and 201 KAR 33.

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See answer above.

(c) How much will it cost to administer this program for the first year? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

(d) How much will it cost to administer this program for subsequent years? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensed Professional Counselors  
(Amendment)

201 KAR 36:070. Education requirements.

RELATES TO: KRS 335.525(1)(c), (d), 335.527(1)(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. This administrative regulation establishes the educational requirements for licensure.

Section 1. (1) In accordance with KRS 335.525(1)(c), an applicant shall be deemed to have a degree in:

(a) Counseling if the applicant has completed an academic program of study where the name of the program or the major field of study contains the word "counseling"; or

(b) [-

(2) ~~An applicant shall be deemed to have a degree in a~~ Related field if the applicant has completed an academic program of study that includes an organized sequence of graduate coursework in a minimum of five (5) of the nine (9) content areas established in KRS 335.525(1)(d).

(2) ~~The (3) Degrees and~~ graduate credit hours required under KRS 335.125(1)(d) shall be from a regionally-accredited institution and shall include all nine (9) content areas established in KRS 335.525(1)(d).

(3) ~~(4)~~ An institution shall be deemed to be a regionally-accredited institution if the institution of higher learning was accredited, when the degree was conferred, by a regional accrediting body recognized by the:

- (a) U.S. Department of Education;
- (b) Council on Postsecondary Accreditation; or
- (c) Council on Postsecondary Education.

Section 2.(1) Except as provided by subsection (2) of this sec-

tion, the practicum or internship required by KRS 335.525(1)(e) shall be completed within the organized sequence of study of the graduate degree of the applicant.

(2) If the degree held by the applicant did not include a 400 hour practicum or internship, the applicant shall have completed a graduate level practicum or internship at a regionally- accredited university or college under the direction of a qualified graduate faculty member.

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

(a) "Instructions for Completion of Application for a Licensed Professional Counselor Associate (LPCA)";

(b) "Instructions for Completion of Application for Licensed Professional Counselor (LPCC)"; and

(c) "Application for Licensed Professional Counselor and Associate";

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Licensed Professional Counselors executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ALLEN EDWARD HALL, Chair

APPROVED BY AGENCY: November 20, 2008

FILED WITH LRC: November 20, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2009, at 3 p.m., local time, at the Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 February 2, 2009. 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: Barbara Rucker, Administrative and Support Services Section Supervisor, Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. This administrative regulation establishes the educational requirements for licensure.

(b) The necessity of this administrative regulation: The necessity of this regulation is to create the educational requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to set fees. The board is given the authority to promulgate regulations per KRS 13A.100 and 335.515 (11).

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

trative regulation allows the Board to oversee the educational requirements of licensees.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation provides clarification related to educational requirements.

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation is necessary to create more understandable distinction between the required degree and content areas.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to the content of the authorizing statute by setting forth a mechanism to clarify an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation will more clearly define the educational requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 100 LPCC applications and approximately 800 LPCA applications each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure will have to comply with statutory and regulatory educational requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the licensee to meet educational requirements.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): Educational competence to practice.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See above answer.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants and license holders.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts those individuals who voluntarily apply for licensure as an LPCC or LPCA.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 335 and 201 KAR 36:020.

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no revenue generated for licensees to meet educational requirements.

(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? See answer above.

(c) How much will it cost to administer this program for the first year? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

(d) How much will it cost to administer this program for subsequent years? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

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

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

RELATES TO: KRS 150.010, 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.178, 150.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to establish hunting seasons, regulate bag and possession limits, and determine the methods and devices used to take wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit organizations. KRS 150.178 authorizes the department to issue elk permits to landowners who enroll property for public hunting access. KRS 150.390 authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, and procedures for elk damage abatement and any post-season hunt to be held after the quota hunts. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

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.

(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 *Cervus elaphus nelsoni*.

(5) "Elk Hunting Unit" or "EHU" means a designated area within the elk restoration zone possessing specific elk management restrictions.

(6) "Elk Management Unit" or "EMU" means a designated area within the elk restoration zone, possessing specific elk management restrictions during a postseason antlerless quota hunt.

(7) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for five (5) years.

(8) "Out-of-zone" means all counties not included in the restoration area.

(9) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk causing property damage by department personnel, the property owner, or another designated

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person. A person authorized to destroy an elk causing damage shall not:

- (a) Move the elk until ~~he has attached~~ a disposal permit provided by the department ~~has been attached~~ to the carcass; and
- (b) Remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk hunt application period shall be December 1 to April 30.

(2) A person shall apply for the elk quota hunt via the department's Web site. The applicant shall provide the following [information]:

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

(b) A nonrefundable application fee of ten (10) dollars.

(3) An applicant shall not apply more than once per application period.

(4) The commissioner may 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.

(5) There shall be a random electronic drawing.

(6) Two (2) permits, one (1) antlered and one (1) antlerless, shall be available for a special youth-only hunt to be held during the regular seasons.

(a) An applicant who has not reached his or her sixteenth birthday by the last day of the application period shall be entered into the special youth drawing. An applicant not drawn for the special youth permits shall automatically be entered into the regular drawing.

(b) The application period and fee for the special youth draw shall be the same as the elk quota hunt application period set forth in subsection (1) of this section.

(c) A special youth hunt permit shall be valid for the assigned EHU during seasons specified in Section 6 of this administrative regulation.

(7) Five (5) either-sex permits shall be available for a special youth-only elk quota hunt to be held for three (3) consecutive days on Paul Van Booven WMA, beginning the last Saturday in September.

(a) There shall be a separate random electronic drawing for the youth-only elk quota hunt.

(b) The application period for the 2009 youth-only elk quota hunt shall be April 1, 2009 through April 30, 2009.

(c) Beginning December 1, 2009, the application period for the youth-only elk quota hunt shall be December 1 through April 30.

(d) Youths shall apply via the department's Web site. The applicant shall provide the following:

1. The youth's name, Social Security number, date of birth, and mailing address or phone number; and

2. A nonrefundable application fee of ten (10) dollars.

3. An applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(e) Applicants for the youth-only elk quota hunt also may apply for the regular quota hunt as set forth in Section (3) of this administrative regulation. A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in the regular quota hunt lottery held during the same calendar year.

(8) No more than ten (10) percent of all drawn applicants shall be nonresidents.

(9) A quota hunt permit awarded via a department-administered lottery drawing shall not be transferable.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner may issue one (1) either-sex elk permit per each 5,000 acres for each year of the agreement to a landowner cooperator.

(2) Recipients of landowner cooperator permits shall comply with the seasons, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

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

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

(b) The landowner cooperator or person who has received a

landowner cooperator permit shall provide the following information to the department before the transferee shall hunt:

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

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

Section 5. Hunter Requirements. (1) The statewide bag limit shall be one (1) elk per hunter per license year.

(2) A drawn applicant or a person who legally receives a landowner cooperator permit or a special commission permit issued pursuant to 301 KAR 3:100 may be accompanied by up to two (2) other individuals.

(3) A drawn applicant shall be assigned to a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns land in the elk restoration zone may hunt on his or her land.

(4) An elk hunter or any person accompanying an elk hunter shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest pursuant to 301 KAR 2:172.

(5) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except for leashed tracking dogs to recover wounded elk;

(c) Hunt over bait as defined in 301 KAR 3:010;

(d) Drive elk from outside the assigned EHU;

(e) Take swimming elk;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk from a vehicle or boat or while on horseback. A disabled hunter who has a hunting method exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(6) An elk hunter hunting in the restoration zone shall display a vehicle tag issued by the department in the windshield of his or her vehicle at all times while hunting elk.

(7) 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 person's firearm.

(8) An adult accompanying a person under (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(9) A hunter may use any firearm, archery equipment, or crossbow legal for hunting deer pursuant to 301 KAR 2:172.

(10) Unless authorized by KRS 237.110, a person carrying any of the following items shall not be permitted to hunt elk as provided by this administrative regulation:—except an elk hunter shall not possess or use:—

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm of less than .270[27] caliber;

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

(d) A shotgun of less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than 0.270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

(11) Except as authorized by KRS 237.110, a person carrying a modern firearm shall not hunt elk during the archery season as set forth in Section 6 of this administrative regulation.

(12) A person, including those who carry a concealed weapon authorized by KRS 237.110, shall not:

(a) Use any of the items listed in Section 5 (10) to take elk; and

(b) Use any firearm to take elk during the archery season as set forth in Section 6 of this administrative regulation.

(13) A quota elk hunter shall only take an elk of the sex determined by the permit drawn.

(14) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in either the antlered-only or antlerless-only quota hunts in accord-

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ance with the seasons and limits in Section 6 of this administrative regulation.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A hunter may use archery equipment for antlered and antlerless elk beginning the third Saturday in October through the third Monday in January.

(2) A hunter may use a crossbow for antlered or antlerless elk:

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

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

(3) A hunter may use archery equipment, a modern firearm, a muzzleloader, or a crossbow:

(a) For antlered elk during one (1) of two (2) seven (7) consecutive day periods as assigned.

1. The first seven (7)-day period shall begin the first Saturday in October.

2. The second seven (7)-day period shall begin the second Saturday in October.

3. The hunter shall be assigned to one (1) week during the regular draw.

(b) For antlerless elk:

1. For ten (10) consecutive days, beginning the second Saturday in November; and;

2. For fourteen (14) consecutive days beginning the second Saturday in December.;

(a) Beginning the first Saturday in October through the third Monday in January for antlered elk; and

(b) Beginning the second Saturday in October through the third Monday in January for antlerless elk.

(2) A hunter may use a modern firearm, muzzleloader, or crossbow:

(a) For seven (7) consecutive days beginning the first Saturday in October for antlered elk; and

(b) For fourteen (14) consecutive days beginning the second Saturday in December for antlerless elk.

(3) A hunter may use a crossbow for antlered or antlerless elk:

(a) From the second Saturday in October through the end of the third full weekend in October; and

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

(4) The statewide season bag limit shall be one (1) elk per hunter.

(a) A quota elk hunter shall only take an elk of the sex determined by the permit drawn.

(b) An individual who receives or is transferred a landowner/cooperator permit or a special commission permit may hunt in either the antlered-only or antlerless-only quota hunts.]

Section 7. EHU boundaries. EHU's shall be designated as follows:

(1) EHU 1 - Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds southeast following the Tug Fork to the Pike County/Buchanan County, Virginia line. The boundary then proceeds southwest following the Kentucky/Virginia state line to US Hwy 23. The boundary proceeds north following US Hwy 23 to the Johnson/Lawrence County line. The boundary proceeds east following the county line of Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 - Starting at the Johnson/Lawrence County line on US Hwy 23, the boundary proceeds south to the intersection of US Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolfe County line. The boundary then follows the county lines of Magoffin/Wolfe County, Magoffin/Morgan County, and Johnson/Morgan County northeast to US Hwy 23, completing the boundary.

(3) EHU 3 - Starting at the intersection of US Hwy 23 and State Hwy 80, the boundary proceeds south following US Hwy 23 to the intersection of US Hwy 23 with the Kentucky/Virginia state line. The boundary then follows US Hwy 119 west to the intersection of US Hwy 119 with State Hwy 15. The boundary then follows State

Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and US Hwy 23, completing the boundary.

(4) EHU 4 - Starting at the Breathitt/Wolfe County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Laurel County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Owsley County, Perry/Owsley County, Breathitt/Owsley County, Breathitt/Lee County, and Breathitt/Wolfe County northeast to State Hwy 15 at the Breathitt/Wolfe County line, completing the boundary.

(5) EHU 5 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and US Hwy 119. The boundary then follows US Hwy 119 east to the intersection of US Hwy 119 and US Hwy 23. The boundary then follows US Hwy 23 south to the intersection of US Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia state line southwest to the intersection of the state line with US Hwy 421. The boundary then follows US Hwy 421 north to the intersection of US Hwy 421 and State Hwy 66, then north along 66 to the intersection of 66 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(6) EHU 6 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with US Hwy 421. The boundary then proceeds south on 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Wayne/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county lines of McCreary/Wayne County, McCreary/Pulaski County, McCreary/Laurel County, Whitley/Laurel County, Knox/Laurel County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County Line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

Section 8. Postseason Quota Hunt for Antlerless Elk on Private Land. (1) A modern firearms hunt for antlerless elk shall take place beginning on the fourth 4th Saturday in January for fourteen (14) consecutive days.

(2) Hunters shall be randomly drawn from the pool of applicants who were not drawn for the quota hunt immediately preceding the postseason hunt.

(3) Drawn applicants shall comply with the requirements in Section 5 of this administrative regulation except that applicants may hunt only in the EMU to which they are assigned or on land they own within another EMU.

(4) EMU's shall be designated as follows:

(a) Knott County EMU. Starting at the intersection of State Hwys 7 and 899 south of Dema, the boundary then proceeds south along 899 to the intersection with State Hwy 160 near Brinkley, then south on State Hwy 160 to the intersection of State Hwy 160 and State Hwy 582 near Littcarr, then east on State Hwy 582 to the intersection of State Hwys 582 and 7. The boundary then proceeds north on State Hwy 7 to the intersection with State Hwy 899, thus completing the boundary.

(b) Stoney Fork EMU. Starting at the intersection of State Hwy 2058 and US Hwy 421 near Helton, the boundary then proceeds south along US Hwy 421 to the intersection of US Hwy 421 and US Hwy 119 near Harlan, then west along US Hwy 119 to the intersection of US Hwy 119 and US Hwy 25E. The boundary then goes north following US Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to US Hwy 421 at Helton, thus completing the boundary.

(5) Public hunting areas shall be closed to elk hunting during

this season.

(6) The provisions of subsections (1) through (5) of this section shall no longer be in effect after 12:00 a.m., March 1, 2009.

Section 9. Tagging and Checking Requirements. Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(1) Record the species, sex, date, and county of kill on a hunter's log;

(2) Check the harvested elk by calling 800-245-4263 and recording the confirmation number on a hunter's log; and

(3) If hunting in the elk zone during the elk quota hunts, attach a department-issued tag to the carcass before moving it.

Section 10. Elk Hunting on Public Land. (1) A drawn applicant or recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests, Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.

(2) Portions of Paintsville Lake WMA lie outside the restoration zone and are subject to the requirements established in Section 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as set forth in Section 6 of this administrative regulation.

(b) Firearms shall not be used to hunt elk, except that youths participating in the youth-only elk quota hunt may use any weapon legal for elk.

(c) The WMA shall be closed to all other hunting during the youth-only elk quota hunt.

Section 11. Out-of-zone Elk Hunting. (1) The methods of taking and seasons established in 301 KAR 2:172 shall apply to taking elk outside of the restoration zone.

(a) In order to harvest an out-of-zone elk, a hunter shall be a legal deer hunter and shall possess an out of zone elk permit.

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

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

(3) Elk harvested out-of-zone shall be telechecked in accordance with Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit. Approved by the Fish and Wildlife Commission June 13, 2008.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2009 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 attend the public hearing, you may submit written comments on the proposed administrative regulation by February 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext 4507, fax (502) 564-9136.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes elk hunting requirements and legal methods to handle elk depredation problems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the boundaries of the units to which hunters are assigned, to establish procedures for a post-season hunt, and to manage elk in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations governing the taking of wildlife. KRS 150.177 and KRS 150.178 authorize the issuance of commission permits and landowner cooperator permits. KRS 150.390 authorizes the department to promulgate administrative regulations for the removal of elk that are causing destruction to property and to establish elk hunting seasons and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The elk population continues to increase and requires additional harvest as the statute provides. This regulation establishes additional hunt dates for firearms elk hunting.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a second week of firearms bull elk hunting and allows antlerless elk hunting during the 10-day modern firearms season currently held for deer. It also modifies the existing youth elk hunting opportunities by adding 5 permits for use during a 3-day September season.

(b) The necessity of the amendment to this administrative regulation: The increased number of firearms days and the additional youth quota hunt are needed to maintain the population at 10,000 animals.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 30,000-35,000 people who apply to hunt elk in Kentucky each year, persons who own or lease land over 5,000 acres and who enter into an agreement with the Department for public hunting access, and property owners sustaining damage from elk.

(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: Persons drawn for an antlered elk permit shall hunt with a firearm in only 1 of 2 assigned week-long seasons. Antlerless permits may be used for an additional 10 days (the existing modern gun deer season). A new youth season will allow additional youth hunting opportunities on an area otherwise closed to firearms hunting for elk.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment establishes a separate lottery for a youth-only elk quota hunt. Fees are in 301 KAR 3:022.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional elk permits will be available for the 2009-10 elk season and the firearm season has been restructured to accommodate additional hunters since 80% of the elk are harvested with modern firearms. Those hunting antlered elk should continue to experience a high-quality hunt since these



hunters will be assigned to one of two seasons comprised of 7 days. Antlerless permit holders will have 10 more days to hunt with a firearm. Youth will have the opportunity for a special 3-day hunt and have the option to apply for the regular quota hunt as well.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation as amended.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fish and Game Funds. There will be no additional costs associated with the changes to this regulation. The department already has the mechanisms in place for administering quota hunt application procedures and random drawings.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists (see "6" above).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There will be a separate lottery for the new youth-only elk hunt, which means that there will be a \$10 fee to enter, regardless of whether the youth is entered in the regular elk quota hunt.

(9) TIERING: Is tiering applied? Tiering was not used because all persons applying in the elk lottery for an elk permit 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? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.177, KRS 150.178, KRS 150.390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred 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 (+/-): None; see 4 (a) and (b) above.

Expenditures (+/-): No additional expenditures; see 4 (c) and (d) above

Other Explanation:

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

##### 301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish waterfowl season dates and limits. This administrative regulation establishes the limits and dates within federal waterfowl hunting frameworks established by 50 C.F.R. Part 20. EO 2008-516, effective June 16, 2008 reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Conservation Snow Goose Order" is defined by 50 C.F.R. Parts 20 and 21.

(2) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(3) "Snow goose" means a snow goose or Ross' goose.

(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 301 KAR 2:225, or 301 KAR 2:226, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser. (1) Season dates:

(a) All ducks except for canvasback, November 27 through January 25.

(b) The season on canvasback shall be closed. [There shall be a split season statewide.

(a) November 22 through November 25; and

(b) December 3 through the last Sunday in January.]

(2) The gun and archery daily bag limit shall be:

(a) Six (6) ducks, which shall not include more than:

1. Four (4) mallards, which shall not include more than one (1) hen mallard;

2. Three (3)[Two (2)] wood ducks;

3. One (1) black duck;

4. Two (2) redheads;

5. One (1) pintail;

6. [Two (2)] Scaup;

a. One (1) scaup from November 27 to January 5;

b. Two (2) scaup from January 6 to January 25;

7. Three (3) mottled ducks.];

8. Two (2) canvasbacks.]

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include more than two (2) hooded merganser.

(3) The possession limit[s] shall be double the daily bag limit.

Section 4. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) White-fronted goose and brant season dates: November 23 through January 31.

(2) Snow goose season dates.

(a) Regular season: November 23 through January 31.];

(b) Conservation Snow Goose Order.];

1. The Western Duck Zone:[The Conservation Snow Goose Order in the Western Duck Zone shall be open] February 1 through February 6 and February 9[4] through March 31.

2. Rest of state: February 1 to March 31.

(3) Canada goose season dates shall be from the starting date listed below through January 31.

(a) The Eastern Goose, Pennyroyal-Coalfield, West-Central Kentucky, and Western Goose Zones shall be open on November 23; and[The season shall not open until:

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1. November 23 in the Western Goose Zone;
2. December 13 in the Eastern Goose Zone;
3. December 13 in the Pennyroyal-Coalfield Goose Zone;
4. December 13 in the West-Central Kentucky Hunt Zone; and]

(b) There shall be a split season in the northeast Kentucky goose zone:

1. December 27[29] through January 4[6]; and
2. January 19 to January 31.

(4) A person shall not goose hunt in:

(a) The areas of Laurel River Lake as posted by sign; and

(b) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.

(5) The gun and archery daily bag limit shall be:

(a) Six (6) dark geese, to include no more than:

1. Two (2) Canada geese;
2. Two (2) white-fronted geese; and
3. Two (2) brant.

(b) Twenty (20) snow geese; except there shall be no daily limit on snow geese during the Conservation Snow Goose Order.

(6) The possession limit shall be double the daily bag limit, except that there shall not be a possession limit on snow geese.

Section 5. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Kentucky Hunt Zone during a Canada goose season;

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or

(3) One-half (1/2) hour after sunset while hunting snow geese during the Conservation Snow Goose Order.

Section 6. Falconry Waterfowl Season and Limits. (1) Season dates:

(a) Snow geese: November 5 through January 31.

(b) Conservation Snow Goose Order:

1. Western Duck Zone: February 1 through February 6 and February 9[4] through March 31.

2. Remainder of state: February 1 through March 31.

(c) Canada Goose season: November 5 through February 1~~], except for that portion of Fulton County in the Western Goose Zone where the Canada Goose season shall be November 10 through February 15;~~

(d) Other waterfowl: November 5 through February 1.

(2) Daily limit: three (3) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

(3) Possession limit: six (6) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

Section 7. Permit for Conservation Snow Goose Order. (1) A person hunting snow geese during the Conservation Snow Goose Order shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 224-2244.

(2) A hunter during the Conservation Snow Goose Order shall submit a Conservation Snow Goose Order report by April 10.

BENJY KINMAN, Deputy Commissioner

For Dr. Jonathan Gassett, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: November 13, 2008

FILED WITH LRC: November 21, 2008 at 9 a.m.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2008–09 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing the framework for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for waterfowl hunting under guidance of the Migratory Bird Treaty Act. Changes in the duck season dates are the result of the calendar shift. In 2008, the season on canvas-back ducks will be closed, and the bag limit on scaup ducks will be reduced from two (2) to one (1) for the first forty (40) days of the duck season. The Canada goose season in the Pennyroyal, West-Central, and Eastern goose zones will receive twenty (20) additional days of hunting to be added to the December segment of the season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new of 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 current changes in season dates and/or bag limits will be published in the hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

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

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

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### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement 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 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State waterfowl population migration and winter management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast

Goose Zone is shorter than permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state. A more restrictive bag limit on hen mallards was implemented to meet hunter requests to protect hen mallards for enhancement of future breeding stocks.

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

#### 301 KAR 2:222. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340, 150.600(1), 50 C.F.R. Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on Wildlife Management Areas and other areas. KRS 150.340 authorizes the department to establish bag [and-creel] limits for waterfowl. This administrative regulation establishes site-specific restrictions on areas in Kentucky regarding waterfowl requirements to optimize public use within sound waterfowl conservation practices. EO 2008-516, effective June 16, 2008 reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.~~[This administrative regulation establishes waterfowl seasons in the Ballard Wildlife Management Area, Central Kentucky Wildlife Management Area, Cumberland Lake Wildlife Management Area, Addington Enterprises Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellow-bank Wildlife Management Area which differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.]~~

Section 1. Definitions. (1) "Blind" means:

(a) A concealing enclosure;

(b) A pit; or

(c) A boat.

(2) "Blind site" means a specific location identified by the department or approved by the U.S. Army Corps of Engineers where hunting is permitted.

(3) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(4) "Party" means:

(a) A person hunting alone; or

(b) From two (2) to four (4) persons who share a blind or blind site.

(5)~~[(4)]~~ "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(6)~~[(5)]~~ "Regular waterfowl season" means the late migratory bird hunting seasons referred to in 50 C.F.R. Part 20.

(7)~~[(6)]~~ "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(8)~~[(7)]~~ "Waterfowl" is defined in KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing shot:

(a) Made of lead;

(b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2:224:

(1) A waterfowl hunter shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

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(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or
2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply when the Conservation Snow Goose Order is the only waterfowl season open, excluding falconry seasons.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a Wildlife Management Area:

(a) A waterfowl hunter shall not establish or hunt from:

1. A permanent blind; or
2. A blind within 200 yards of:
  - a. Another blind; or
  - b. A waterfowl refuge;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a blind; and

(d) A hunter shall remove decoys and personal effects from the Wildlife Management Area daily, except that a hunter drawn for a multiday hunt may leave decoys in place for the duration of the hunt, at his or her own risk.

(2) A person wishing to establish or use a permanent blind or blind site on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doung Travis Wildlife Management Areas:

(a) Shall first obtain a permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner;

(c) Shall not hold more than one (1) permit per area; and

(d) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, Sloughs, or Doung Travis Wildlife Management Areas:

1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and

2. Shall be eighteen (18) years of age or older.

(3) The holder of a blind permit shall:

(a) Construct or establish his or her blind or blind site before November 20 or forfeit the permit;

(b) Not lock a blind; and

(c) Unless an extension of time is granted, remove his blind and blind materials within thirty (30) days ~~after~~<sup>of</sup> the close of the regular waterfowl season or be ineligible for a permit the following year.

(4) A blind or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-serve basis.

(5) A blind restriction specified in this section shall not apply to a falconer if a gun or archery season is not open.

Section 5. On a Wildlife Management Area: (1)(a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.

(b) If specific hunting dates and times are given in this section, a person shall not hunt waterfowl except on those dates and times.

(c) Paragraph (b) of this subsection shall not apply to a waterfowl hunting season opening before October 15.

(2) A person shall not:

(a) Hunt on an area or portion of an area marked by a sign as closed to hunting;

(b) Enter an area or a portion of an area marked by signs as closed to public access; or

(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County.

(a) Sliding shell limit scale.

1. The shell limit shall be twenty-five (25) when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and

2. The shell limit shall be fifteen (15) when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2).

(b) At least one (1) person in a blind shall be eighteen (18)

years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA.

(c) At Ballard Wildlife Management Area:

1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.

2. The duck, coot, and merganser season shall be December 3[5] through January 25[27].

3. The goose season shall be December 3[5] through January 31.

4. Youth waterfowl season shall be the first weekend in February.

5. A waterfowl hunter shall not hunt on a Monday, Tuesday, Christmas Day, or New Year's Day.

6. A waterfowl hunter shall:

a. Apply in advance in accordance with Section 6 of this administrative regulation;

b. Case his gun while using department-supplied transportation to and from a blind;

c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15; and

d. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:

1. Each party~~[A person]~~ shall:

a. Not hunt on a Monday, Tuesday, Christmas Day or New Year's Day;

b. Have in their possession~~[Check in daily at the designated check station]~~ by 8 a.m. during the December 3 through January 31 segment of the waterfowl season, a daily check-in card before entering the area to set a blind, place decoys, or hunt~~[duck and Canada Goose season]~~; and

c. Check out the same day by:

(i) Visiting a department-designated check station prior to 8 a.m.; or

(ii) Depositing a card at a department-designated drop point after 8 a.m.~~[after 8 a.m. by depositing a card at a department-designated drop point.]~~

2. Duck season shall be open one-half (1/2) hour before sunrise to sunset Thanksgiving Day for four (4) consecutive days on portions of Boatwright Wildlife Management Area open to hunting.

3. A department blind or blind site shall be assigned through a daily draw from December 3 through January 31.

4. A blind or blind site shall be offered to another hunter on a first-come, first-served basis, if the blind or blind site has not been assigned during the draw that day.

5. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

6. ~~[Waterfowl hunters shall hunt from department blinds or within twenty-five (25) feet of blind sites as marked by the department.]~~

7. ~~Boat blinds shall not be permitted in flooded timber, except during periods of flood when~~<sup>where</sup>~~no other access is possible and except mobility-impaired hunters may hunt from a boat, with no set-back restriction for those in the party assisting with the hunt. When boat blinds are permitted, there shall be a 200 yard minimum distance between boat blinds.~~

7. A party shall only~~[8. On the Olmsted and Peal Units, a person shall not:~~

a. ~~hunt waterfowl~~ <sup>[except]</sup> ~~from a permanent department blind or layout blind(s) set in such a manner that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party; or~~

8. A party shall only<sup>[within twenty-five (25) feet of department blinds if the area is under flood and only accessible by boat; or</sup>

b. ~~hunt waterfowl~~ <sup>[except]</sup> ~~from a blind site or within 200 yards of a blind site assigned by the department during the December and January segment of the waterfowl season~~<sup>[Canada Goose season]</sup>.

9. On the Peal unit:

a. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

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b. More than four (4) parties shall not hunt at the same time on Fish Lake;

c. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

d. A party shall not hunt waterfowl except from within twenty-five (25) feet of a blind site assigned by the department during December and January.

10. On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than a Canada Goose except from a blind or blind site assigned by the department and unless:

a. The season for these species is open; and

b. The season for Canada Goose is also open.

c. Except, that area open for hunting during the Canada goose season shall also be open during the Snow Goose Conservation Order without blind restrictions.

(4) Barkley Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) A person shall establish a permanent blind within ten (10) yards of his or her blind site within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and the TVA power transmission lines at river mile 55.5.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, a person shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) A waterfowl hunter:

1. May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

2. Shall not use a breech-loading firearm elsewhere on the area.

(6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(7) Miller Welch-Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 14.

(8) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:

(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(9) Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area. ~~[Addington Enterprises Wildlife Management Area shall be closed to waterfowl hunting.]~~

(10) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On Forked Lake, Indian Camp Lake, Fish Lake, Number Four Lake, and Black Lake, all waterfowl hunting after November 1:

1. Shall be from blind sites assigned by a random preseason

draw.

2. Shall be within ten (10) yards of a blind site, even during periods of Mississippi River flooding.

(11) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:

(a) Within the no wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; and

(d) Within three-quarters (3/4) of a mile from the dam.

(12) Green River Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(13) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay; and

3. The eastern two-thirds (2/3) of Duncan Bay.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A waterfowl hunter shall remove decoys and personal effects daily.

(15) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(16) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(17) Ohio River Waterfowl Refuge.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

(18) Peabody Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:

1. Sinclair Mine, as bounded by Hwy 176, the haul road, and Goose Lake Road as posted by signs; and

2. Homestead, as bounded by Cool Spring-Wysox Road, H2 Road, H1 Road, and H6 Road, and areas posted by signs.

(19) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.

(20) Sloughs Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On the Grassy-Pond Powell's Lake Unit, a waterfowl hunter:

1. Shall use a permanent blind provided by the department;

2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily; and

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(d) On the Jenny Hole-Highlands Creek Unit, a waterfowl

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hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party; and  
2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;

2. May occupy a blind not claimed by the permittee one (1) hour before sunrise;

3. Shall be limited to twenty-five (25) shells when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2);

4. Shall be limited to fifteen (15) shells when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2);

5. Shall be accompanied by an adult if under eighteen (18) years of age; and

6. The waterfowl blind for mobility-impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 through March 15.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(21) South Shore Wildlife Management Area.

(a) Closed to all hunting November 15 through January 30, except quota hunt waterfowl and dove hunting.

(b) The quota hunt requires advance application and selection.

(c) Hunters shall use department blinds.

(d) Department blinds are allocated by a preseason draw. Applicants shall mail a three (3) by five (5) white index card with hunter information in an envelope to Grayson Lake WMA post marked between November 1 and November 15.

~~(22) [Starfire Wildlife Management Area shall be closed to waterfowl hunting.~~

~~(23) Taylorsville Lake Wildlife Management Area. Shooting hours shall be thirty (30) minutes before sunrise until 2 p.m.~~

~~(23) The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 through the last day of February, except for quota deer hunting, and the waters from the boat ramp to the Highway 248 bridge, which are open to fishing until November 15.~~

~~(24) Westvaco Wildlife Management Area.~~

~~(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.~~

~~(b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.~~

~~(25) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch shall be closed to all waterfowl hunting.~~

~~(24) (26) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.~~

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard or Sauerheber Unit of Sloughs Wildlife Management Areas shall:

(a) Apply to the vendor supplied by the department by calling (877) 598-2401;

(b) Register between September 1 and September 30; and

(c) Pay a three (3) dollar application fee for each application.

(2) A person shall not apply more than one (1) time for each hunt.

(3) Each hunter drawn may bring up to three (3) additional hunters.

(4) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year~~year's waterfowl quota hunts~~ if the hunter violates state or federal regulations while waterfowl hunting on WMAs in which hunter numbers are regulated as part of a preseason or daily drawing.

Section 7. State Parks. (1) There shall be no waterfowl hunting on state parks except as specified in the subsection (2) of this section.

(2) State Parks.

(a) There shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson~~Grason~~ Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Painstville~~Painstville~~ Lake, Pennyryle Lake, and Yatesville Lake State Parks.

(b) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days in which the park office is not open.

(c) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(d) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days in which the park office is not open.

(e) Statewide waterfowl hunting requirements apply.

Section 8. Mentor Waterfowl Hunts at Minor Clark and Peter W. Pfeiffer Fish Hatcheries. (1) There shall be youth waterfowl mentor hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.

(2) Dates shall be determined and published in the current Waterfowl Hunting Guide.

(3) Youths shall register in advance and carry postcard notification for the day of the hunt.

(4) Youths shall be accompanied by an adult eighteen (18) years or older.

(5) One (1) youth shall not be accompanied by more than one (1) adult.

(6) One (1) adult may accompany two (2) youths.

(7) Hunting shall only be permitted from established blinds and hunters shall not change blinds.

(8) Four (4) hunters shall be permitted per blind.

(9) Hunters may only discharge firearms from the blind.

(10) Hunters may only have fifteen (15) shotshells per hunter.

(11) Hunters shall immediately retrieve downed birds. Chasing or harassing waterfowl outside the blinds is strictly prohibited.

(12) Firearms shall be encased when traveling to and from the blind.

(13) Hunting shall end at noon and hunters shall be off the premises by 1 p.m.

(14) All decoys and equipment shall be removed at the end of each day's hunt.

(15) Hunters shall report harvest by dropping hunt permit at designated location.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: November 13, 2008

FILED WITH LRC: November 21, 2008 at 9 a.m.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frame-

works established in 50 C.F.R. Part 20 according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2008–09 waterfowl hunting requirements in accordance with the USFWS and Kentucky Department of Fish and Wildlife Resources (KDFWR) management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates, bag limits and other hunting requirements on public lands managed for waterfowl and public hunting opportunity by KDFWR.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals for this important natural resource.

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

(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing frameworks for waterfowl hunting seasons in the United States. This amendment reflects the federal mandate regulations for waterfowl hunting within the requirements of the Migratory Bird Treaty Act. Changes in the duck season dates are the result of the calendar shift on lands managed by Kentucky Department of Fish and Wildlife for public hunting. In 2008, the season on canvasback ducks will be closed, and the bag limit on scaup ducks will be reduced from two (2) to one (1) for the first forty (40) days of the duck season. The Canada goose season in the Pennyroyal, West-Central, and Eastern goose zones will receive twenty (20) additional days of hunting to be added to the December segment of the season. Changes in hunting requirements for Boatwright and Taylorsville WMA are consistent with department goal of providing more user opportunity consistent with the welfare of the state's waterfowl resource.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new of 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 current changes in season dates and/or bag limits will be published in the hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a

continuing basis.

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

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement 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 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds be-

fore, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public wetlands managed by KDFWR. KDFWR imposes more restrictive hunting regulations on these lands in effort to meet international waterfowl management objectives while still providing quality hunting opportunity consistent with waterfowl population objectives.

**JUSTICE AND PUBLIC SAFETY CABINET  
Kentucky Law Enforcement Council  
(Amendment)**

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

RELATES TO: KRS 15.330(1)(f), (h), 15.380, 15.382, 15.3971, 15.540

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize[authorizes] the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592[15.540 and 15.990 to 15.992]. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

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

- (a) The name of the entity that[who] completed the analysis;
- (b) The date on which the analysis was completed;
- (c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and
- (d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

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

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

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

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

3. Number and quality of job task analyses completed.

(b) Methodological approach.

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

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

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

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

(3) Initial review.

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

either:

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

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

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

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

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

1. The reasons for the finding; and

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

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

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

(a) The form has been received and is complete; or

(b) The form is incomplete and the specific information which shall be supplemented in order to process the form. The KLEC office[POPS] shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. No applicants shall be tested or certified by KLEC until the form is complete.

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

(4) KLEC Review. The KLEC Peace Officer Professional Standards Committee [on-Certification] shall review the form and the[POPS] recommendation of the KLEC office and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the form KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

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

1. With the Secretary of the Justice and Public Safety Cabinet; and

2. Within thirty (30) days of receipt of the notice of rejection.

(b) The notice of appeal shall be submitted:

1. On KLEC [POPS] Form S; and



2. With a copy of the notice of rejection of agency testing attached.

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

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

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

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

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

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

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

Section 4. Suitability Minimum Requirements: The following minimum requirements and procedures are established for KLEC testing:

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(k) shall consist of the following minimum requirements:

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

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

(a) The agency shall submit one (1)[two-(2)] completed FD 258 FBI Fingerprint Card[Cards and all required fees] to the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check[, then forward the card to the FBI].

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

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

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

(3) Psychological screening as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d) shall consist of the following minimum requirements:

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

- 1. Abilities;
- 2. Personality characteristics; and
- 3. Related constructs, including:
  - a. Integrity;
  - b. Conscientiousness; and
  - c. Vocational preference[, personality characteristics, and related constructs, including integrity, conscientiousness, and vocational preference, which are relevant to job-related duties;]

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;

(c) 1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer.

2. The summary statement shall classify applicants as:

- a. "Suitable";
- b. "Not suitable"; or
- c. Borderline.

3.["suitable", "not suitable", or borderline.] In the case of borderline and not suitable the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency; and

(d) Screening shall be administered in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association.

(4) Physical ability[agility] testing as specified in KRS 15.382(16) shall consist of the following minimum requirements:

(a) The applicant shall successfully complete each of the following events as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the Validation of Physical Fitness Standards for the Kentucky Department of Criminal Justice Training, Appendix I - Procedures for Physical Fitness Testing Procedures for Mandatory Physical Fitness Tests, September 25, 1998, Fitness Intervention Technologies:

- 1. One and five-tenths (1.5) mile run in seventeen (17) minutes, twelve (12) seconds;
- 2. 300 meter run in sixty-five (65) seconds;
- 3. Twenty (20) push ups;
- 4. One (1) bench press equal to sixty-four (64) percent of the applicant's body weight; and
- 5. Eighteen (18) sit ups in one (1) minute.

(b) If an applicant passes all events when participating in the physical ability[agility] test in its entirety, he or she shall have met the physical ability[agility] minimum requirements.

(c) If an applicant passes at least one (1) event when participating in the physical ability[agility] test in its entirety:

1. He or she may retest in the failed events no sooner than forty-eight (48) hours and no later than sixty (60) days from the date of the initial test.

2. All failed events shall be retested on the same date.

3. If the applicant passes all previously failed events on the date of the retest, he or she shall have met the physical ability[agility] minimum requirements.

4. If the applicant does not pass all previously failed events on the date of the retest, he or she shall repeat the physical ability[agility] test in its entirety and shall receive no credit for events which were passed during previous tests or retests. The applicant may repeat the physical ability[agility] test no sooner than forty-eight (48) hours from the date of the retest.

(d) If an applicant fails all events when participating in the physical ability[agility] test in its entirety, he or she shall repeat the physical ability[agility] test in its entirety and shall receive no credit for events which were passed during previous tests or retests.

(e) An applicant may participate in the physical ability[agility] test in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

(f) An applicant may participate in one (1) physical ability[agility] retest for each physical ability[agility] test taken in its entirety.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the following minimum requirements:

(a) The applicant shall complete KLEC [POPS] Form G-2, Medical History Statement, which along with KLEC [POPS] Form G-3, Medical Guidelines Implementation Manual, shall be provided to the physician or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The physician or physician's assistant shall complete KLEC [POPS] Form G-1, Medical Examination Report and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(i), and 15.540(1)(f) shall consist of the following minimum requirements:

(a) The applicant shall execute KLEC [POPS] Form K-1 and submit a urine sample that shall be screened using gas chromatography/mass spectrometry (G.C.M.S.) for the following drugs and thresholds for positive indications:

1. THC (marijuana), 20 ng/ML, 5 GC/MS;
2. Amphetamines, to include Methamphetamine and Methylenedioxymethamphetamine, 300 ng/ML, 100 GC/MS;
3. Cocaine, 150 ng/ML, 50 GC/MS;
4. Opiates, 300 ng/ML, 150 GC/MS;
5. Barbituates, 200 ng/ML, 100 GC/MS;
6. Phencyclidine (PCP), 25 ng/ML, 25 GC/MS;
7. Methadone, 300 ng/ML, 100 GC/MS;
8. Oxycodone (Oxycontin), 100 ng/ML, 100 GC/MS;
9. Benzodiazepines, 200 ng/ML, 100 GC/MS;
10. Propoxyphene, 300 ng/ML, 200 GC/MS;

(b) [for: marijuana, amphetamines, cocaine, opiates, phencyclidine, barbiturates, benzodiazepines, propoxyphene, methadone, and methaqualone.] The integrity of the urine sample shall be documented on KLEC [POPS] Form K-2, Drug Screening Chain of Custody. [The testing shall be done in compliance with Federal DOT Work Place Standards, 49 C.F.R. 40, subparts A and B.]

(7) Polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e) shall consist of the following minimum requirements: The applicant shall complete KLEC [POPS] Form I-1, Polygraph Waiver, and KLEC [POPS] Form I-2, Polygraph Applicant Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant [consisting of the questions as listed in KLEC POPS Form I-3, Polygraph Test Questions].

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form [POPS Forms] I-1 - Consent for Preemployment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; [;] and

(d) KLEC Form T-2 - Health Confirmation - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office [POPS] shall mail to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to insure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public [at least three (3) months] prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training [Richmond POPS office] as needed.

(3) Registration for KLEC administered testing. The KLEC office [POPS] shall receive KLEC [POPS] Forms A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification at the time of testing.

(b) The KLEC office [Applicants shall bring a completed copy of KLEC POPS Form H-2 at time of psychological testing.

(c) POPS shall receive the completed polygraph questionnaire KLEC [POPS] Form I-2 at the time of testing.

Section 6. Test Reporting by KLEC. (1) Results of [drug and psychological screening provided through KLEC shall be forwarded directly to the employing agency head by the entity administering the test. All other] tests provided by or through the KLEC office will be forwarded to the employing agency head [by POPS].

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC [POPS] Form D. The information from the completed form shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability [agility]: results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability [Psychological] screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, the applicant shall notify the employing agency who shall schedule a new suitability [psychological] screening for the applicant.

(c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening: results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant that leaves and reenters the testing process for preselection screening shall be required to submit to another drug screening.

(4) Updating test results. It shall be the responsibility of the employing agency to update test results if necessary by submitting KLEC [POPS] Form D to the KLEC office [POPS].

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid.

(b) If agencies enter into [such] an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability [psychological], and polygraph results directly from the agency that initial requested testing of the applicant [entity administering the examination].

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency. (1) An agency that performs physical ability [agility] testing based upon the requirements in Section 4(4)(a) of this administrative regulation shall report all test results by submitting a [POPS] Form PT-1 - Physical Ability [Agility] Test Session Report to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability [agility] testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability [agility] test results shall be reported to the KLEC office regardless of whether the applicant:

(a) Passes or fails the test; or

(b) Performs or completes every component of the physical ability [agility] test.

Section 8. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Sixty-five (65) dollars for each psychological screening;

(b) \$100 for each polygraph examination; and

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. [POPS] The actual approved budget of the governmental unit for the current and the preceding year;

2.[-] The number of certification applicants for the current and preceding year;

3.[-] The actual revenue receipts of the governmental unit for the current and the preceding year;[-] and

4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that inadequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application the KLEC office[POPS] shall mail a notification to the agency that either:

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

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

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office[POPS] shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Certification shall review the application and the[POPS] recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office[POPS] by certified mail, to the following address, Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office[POPS] shall immediately notify DOJT.

Section 9. Employment Changes. (1) Pursuant to KRS 15.392 and 15.580[15.392-] when a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC [POPS] Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency [as a peace officer] the employing agency shall submit KLEC [POPS] Form F within five (5) business days of the employment or appointment.

(3) Information from completed KLEC [POPS] Forms F shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

~~[(2) A peace officer who retires pursuant to KRS 61.637, and is reemployed as a peace officer with the same agency no later than twelve (12) months from the initial retirement date, shall be considered to have remained in continuous employment of that agency. The peace officer shall have 180 days from the date of reemployment to correct any in-service training deficiency resulting from the retirement period.]~~

Section 10. Out-of-state law enforcement basic training. (1) An applicant to a Kentucky law enforcement or telecommunications

agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant;

(b) The basic training course or academy is a single, stand alone course; and

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency.

(2) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

Section 11. Records. (1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030. ~~[KLEC shall devise and maintain a database management system that organizes records adequately to the tasks of associated with certification.]~~

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to insure their security. In order to properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2)[15.400(3)], a law enforcement or telecommunications agency shall:

(a) Keep all records relating to [an officer's] certification in a file separate from any personnel file maintained by the hiring authority; and

(b) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in [an officer's] agency file a "Certification of Peace Officer Professional Standards Testing Procedures" form indicating that the following testing procedures have been completed:

1. Polygraph;
2. Suitability screening;
3. Drug screen; and
4. Medical examination or history statement.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12.[44-] Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRC Chapter 13B, may[shall be] barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) If an applicant has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he or she shall not participate in physical ability[agility] testing if [he is] under the influence thereof to the extent that the applicant may be impaired or may endanger himself, her-self, [or] other persons, or property. An applicant shall advise the KLEC test administrator in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate dan-

ger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC [POPS] Form R shall be mailed to the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 13.[42-] Compliance. (1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to assure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in KLEFPF. If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14.[43-] Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office[POPS] upon ~~the peace officer's~~ loss of certification.

Section 15.[44-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;

(b) ~~[Federal DOT Work Place Standards, 49 C.F.R. 40, subparts A and B;~~

(c) KLEC [POPS] Form A - Testing Registration - Attesting to Minimum Standards, (May 2007 edition)[Testing Registration, revised 9/13/00];

(d) KLEC [POPS] Form B - Basic Training Completed (nonDOCJT), revised 1/19/99;

(e) KLEC [POPS] Form C - Grandfather Information, (July 2006 edition)[revised 1/19/99];

(f) KLEC [POPS] Form D - All Standards Met, (May 2007 edition)[revised 9/13/00];

(g) KLEC [POPS] Form E - Request for Certification for Exempt Officers, revised 1/19/99;

(h) KLEC [POPS] Form F - Status Update (July 2008 edition)[Recertification, revised 9/13/00];

(i) KLEC [POPS] Form G-1 - Medical Examination Report, (June 19, 2001 edition)[revised 1/19/99];

(j) KLEC [POPS] Form G-2 - Medical History Statement, (July 1, 2001 edition)[revised 1/19/99];

(k) KLEC [POPS] Form G-3 - Medical Screening Guidelines Implementation Manual, (July 1, 2001 edition)[revised 1/19/99];

(l) KLEC [POPS] Form H-1 - Background Investigation, (June 2001 edition)[revised 1/19/99];

(m) KLEC [POPS] Form H-2 - Personal History Statement, revised 1/19/99;

(n) KLEC [POPS] Form I-1 - Consent for Preemployment Polygraph Examination, (July 2007 edition)[revised 1/19/99];

(o) KLEC [POPS] Form I-2 - Pre-employment Polygraph [Applicant] Questionnaire, (June 2007 edition)[revised 1/19/99];

(p) KLEC [POPS] Form I-3 - Polygraph Test Questions, (July 2006 edition)[revised 1/19/99];

(q) KLEC [POPS] Form J - JTA Submission, revised 1/19/99;

(r) KLEC [POPS] Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form, (July 2006 edition)[revised 1/19/99];

(s) KLEC [POPS] Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form, (July 2006 edition)[revised 1/19/99];

(t) KLEC [POPS] Form L-1 - Code of Ethics, (July 1, 2001 edition)[revised 1/19/99];

(u) KLEC [POPS] Form L-2 - Canon of Ethics, (July 1, 2001 edition)[revised 1/19/99];

(v) KLEC [POPS] Form Q - Agency Submission Form, (October 2006 edition)[revised 1/19/99];

(w) KLEC Form Q-3 - Drug Screening Approval, (July 2006 edition);

(x) KLEC Form Q-4 - Polygraph Approval, (July 2006 edition);

(y) KLEC Form Q-5 - Psychological Examination Approval, (July 2006 edition);

(z) KLEC Form Tele-Q - Agency Submission Form, (July 2006 edition);

(aa) KLEC [POPS] Form R - Removal from Testing, revised 1/19/99;

(ab) KLEC [POPS] Form S - Notice of Appeal, revised 1/19/99;

(ac) KLEC [POPS] Form T-1 - Medical Release - Phase I Testing, (July 2001 edition)[revised 1/19/99];

(ad) KLEC Form T-1a - Physician's Medical Release Form - (July 2001 edition);

(ae) KLEC [POPS] Form T-2 - Liability Waiver[Health Confirmation] - Phase I Testing, (July 2001 edition)[revised 1/19/99];

(af) POPS Form PT-1 - Physical Ability[Agility] Test Session Report, (1/03 edition); and

(ag) POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures, (7/04 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council[,] Office ~~[of Peace Officer Professional Standards, 415] Funderburk Building, Eastern Kentucky University, [521 Lancaster Road,] Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.~~

WILLIAM F. WALSH, Chair

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2009 at 9 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2009, 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 February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the guidelines and procedures necessary to implement and administer peace officer certification.

(b) The necessity of this administrative regulation: The regulation is necessary so that the Kentucky Law Enforcement Council

may fulfill its responsibility, as established in KRS 15.330, to approve law enforcement officers as having met training requirements, administer the Kentucky Law Enforcement Foundation Program Fund (KLEFPF), and certify peace officers pursuant to KRS 15.380 through 15.404.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992. This administrative regulation is required to establish certification procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for peace officer certification and provides necessary forms.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by including law enforcement telecommunicators and court security officers, listing the specific drugs for which testing will be administered, establishes a procedure for the certification of out-of-state transfers, adding and updating forms to be utilized, and makes drafting and formatting changes.

(b) The necessity of the amendment to this administrative regulation: To list the specific drugs for which testing will be administered, establish a procedure for the certification of out-of-state transfers, and to add and update forms to be utilized

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330(1)(f) and (h) and KRS 15.590 authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.590.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clearly include law enforcement telecommunicators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that utilize DOJT basic training, which is approximately 400 agencies, including most state, county and local agencies the Kentucky State Police, and the Lexington and Louisville Police Departments. Additionally, approximately 8,000 law enforcement and telecommunications personnel would be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new actions that the regulated entities will have to take. This amendment adds new forms which will better assist them in the hiring and certification of personnel.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have additional forms that will assist them in submitting certification information.

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

(a) Initially: No additional state costs.

(b) On a continuing basis: No additional state costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all divisions of state or local government that employ peace officers who are required by KRS 15.380 to be certified, including city and county police departments, sheriffs' offices, state agencies, and telecommunicators.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(f) and (h), 15.590.

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

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

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

(c) How much will it cost to administer this program for the first year? The testing and certification of peace officers, telecommunicators, and court security officers should remain the same as previously and there should be no additional costs on the KLEC or the agencies that are affected by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Costs are expected to remain the same.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

Division of Placement Services

(Amendment)

#### 505 KAR 1:100. Department of Juvenile Justice Policies and Procedures: admissions.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile ser-

vices program.

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

(a) The "Department of Juvenile Justice Policy and Procedures Manual: Admissions", December 15, 2008~~[April 13, 2006]~~, which includes the following:

- 200 Classification (Amended 12/15/08~~[04/13/06]~~)
- 200.1 Day Treatment Admissions (Amended 12/15/08~~[04/13/06]~~)
- 202 Waiting List (Amended 12/15/08~~[04/13/06]~~)
- 204 Daily Census and Population (Amended 12/15/08~~[04/13/06]~~)
- 206 Administrative Transfers (Amended 12/15/08~~[04/13/06]~~)
- 208 Youth Rights/~~Orientation~~ (Amended 12/15/08~~[04/13/06]~~)
- 209 Youth Access to Outside Investigative ~~Agencies~~Units (Amended 12/15/08~~[04/13/06]~~)
- 210 Interstate Referrals (Amended 12/15/08~~[04/13/06]~~)
- 211 Interstate Runaways, Escapees and Absconders (Amended 12/15/08~~[04/13/06]~~)
- 212 ~~Interstate~~Out-of-State Purchase of Care (Amended 12/15/08~~[04/13/06]~~)
- 213 Interstate Travel (Amended 12/15/08~~[04/13/06]~~)
- 214 Interstate Revocations and Case Closure (Amended 12/15/08~~[04/13/06]~~)
- 217 ~~Advanced~~Advance Care Unit 12/15/08~~[04/13/06]~~.
- (a)~~[(b)]~~ The "Classification and ~~Placement~~Assessment Manual", 12/15/08~~[04/13/06]~~;
- (b)~~[(c)]~~ The "Youth Level of Service/Case Management Inventory (YLS/CMI), User's Manual", 01/13/06;
- (c)~~[(d)]~~ The "Child and Adolescent Service Intensity Instrument (CASI)", also known as "Child and Adolescent Level of Care Utilization System (CALOCUS)", 01/13/06;
- (d)~~[(e)]~~ The "Estimate of Risk of Adolescence Sex Offense Recidivism (ERASOR)", 01/13/06; and
- (e)~~[(f)]~~ The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 01/13/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

J. RONALD HAWS, Commissioner

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, January 21, 2009, at 9 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, January 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, February 2, 2009. 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: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing

the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees and the residential and community populations.

(b) The necessity of this administrative regulation: o conform to the requirements of KRS 15A.065 and 15A.067.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the admissions of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential and community population as to their duties, rights, privileges, and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile Justice into compliance with ACA Standards and show actual practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1460 employees of the residential programs, Approximately 2267 youth in all programs, All visitors and volunteers to Department of Juvenile Justice facilities

(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: To ensure youth are placed in the least restrictive alternative setting, and to provide a clearer understanding of the policies and procedures by employees and residents, thereby impacting the security and safety of the agency and the public.

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

(a) Initially: \$1000

(b) On a continuing basis: \$500

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2008 – 2010 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall 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 fees: None.

(9) Tiering: Is Tiering applied? No. Tiering was not appropriate to 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 question of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

**EDUCATION CABINET  
Kentucky Board of Education  
Department of Education  
(Amendment)**

**702 KAR 3:090. Depository bond, penal sum.**

RELATES TO: KRS 156.010, 160.570

STATUTORY AUTHORITY: KRS 156.029(7), 160.570

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Board of Education to develop policies and to promulgate administrative regulations by which the Department of Education shall be governed. KRS 160.570 requires each local board of education - designated depository of funds to execute bond for the faithful performance of its duties, and the bond shall be approved by local board and the Commissioner of Education. KRS 160.570 also defines the nature and qualifying sureties for the bond and requires the Kentucky Board of Education to regulate the penal sum of the bond. This administrative regulation establishes standards for bonds of depository.

Section 1. [By July 1 of each year, on the advice of the superintendent,] A local board of education, on advice of the superintendent, shall determine the penal sum of the bond of depository at least thirty (30) days prior to the depository entering upon its duties and by July 1 of each fiscal year thereafter.

Section 2. The district shall obtain approval for the bond of depository from the Commissioner of Education prior to the depository entering upon its duties. A depository bond shall not be approved by the Commissioner of Education if the commissioner determines that the bond is inadequate to insure the deposits of the local board of education, pursuant to the commissioner's authority in KRS 156.010.

Section 3. (1) [As security for the bond, the depository bank shall deposit with its escrow agent collateral in an amount equal to the penal sum of the bond. The collateral shall consist of:

(a) United States Government Bonds;

(b) Kentucky School Revenue Bonds; or

(c) Federal government agency obligations, including obligations of the Federal Farm Credit Banks, the Federal National Mortgage Association, and the Federal Home Loan Bank.

(2) The penal sum of the depository bond shall be at least equal to either:

(a) 103 percent of the current daily balances in each account as they may fluctuate throughout the life of the bond; or

(b) The [average of the] highest daily balance in each account [in] each month[,] for all accounts in the previous year. The penal sum of the depository bond shall be adjusted to reflect expected increases or decreases in the highest daily[day] balances due to anticipated changes of deposit amounts in the current year.

(2)(3) The escrow agent for a depository choosing to use a collateral bond shall file safekeeping receipts with the local board of education as evidence of any[that] collateral that has been pledged in accordance with the provisions of the bond executed by the depository institution. To reduce the penal sum of a collateral [ef-a] bond, the local board of education shall submit a notice, with reasons for the reduction, to the Commissioner of Education. A local board of education shall not permit a reduction of the collateral of a bond without execution of a new bond with prior approval of the Commissioner of Education.

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).

JON E. DRAUD, Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 22, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to

be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, 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 C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for each local board of education to execute a bond for the faithful performance of its duties as required in KRS 160.570, defines the nature and qualifying sureties for the bond and requires the Kentucky Board of Education to regulate the penal sum of the bond.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 160.570 to establish standards for bonds of depository.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation establishes the requirements for each local board of education to execute a bond for the faithful performance of its duties as required in KRS 160.570.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific requirements for each local board of education to execute a bond for the faithful performance of its duties as required in KRS 160.570

(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 clarification through a number of technical amendments that will conform more closely to statutory authority, improve the level of business practice occurring in the state, and make the regulations more easily understandable to users.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 160.570 to establish standards for bonds of depository.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by establishing the requirements for each local board of education to execute a bond for the faithful performance of its duties as required in KRS 160.570

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarification through a number of technical amendments that will help school districts conform more closely with statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendments will allow districts to conform more closely with statutory authority, improve the level of business practice in school districts across the state, and make the regulation more easily understandable to users.

(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 regulation establishes the requirements for each local board of education to execute a bond and defines the nature and qualifying sureties for the bond. The Kentucky Board of Education is required to regulate the penal sum of the bond.

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

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no costs to the Kentucky Department of Education due to these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The technical amendments will help school districts to conform more closely to statutory authority, improve the level of business practice occurring in the state, and make the regulations more easily understandable to users.

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

(a) Initially: There is no additional cost to implement the amendments.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If needed, the school district General Fund.

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

(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 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 156.160

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 additional revenue generated by this administrative regulation. No additional costs are expected.

(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: No costs.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Workforce Investment Office of Career and Technical Education (Amendment)

#### **780 KAR 1:010. Kentucky State Plan for Career and Technical Education[2001-2004 program plan].**

RELATES TO: KRS 151B.025(7), [151B.100(2),] 151B.145, 151B.150, 20 U.S.C. 2342[; EO-2000-990]

STATUTORY AUTHORITY: KRS 151B.025(7), [151B.100(2),] 20 U.S.C. 2342(a)(1)[; EO-2000-990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.025(7) designates the Office of Career and~~[Department for]~~ Technical Education as the sole state agency for developing and approving state plans required by federal law as prerequisites to receiving federal funds for vocational-technical or technology education. KRS 151B.150 authorizes the office~~[EO-2000-990 abolished the State Board for Adult and Technical Education and transferred the board's duties and functions to the department. It also authorized the department]~~ to promulgate administrative regulations to implement federal vocational education programs. 20 U.S.C. 2342(a)(1) requires the state agency to prepare a state plan for career~~[vocational]~~ and technical education as a prerequisite to receiving federal funds under 20 U.S.C. Chapter 44. This administrative regulation establishes and incorporates by reference the [2001-2004] Kentucky State Plan for Career and~~[Vocational]~~ Technical Education.

Section 1. Pursuant to the authority vested in the Office of Career and~~[Department for]~~ Technical Education, the [2001-2004] Kentucky State Plan for Career and~~[Vocational]~~ Technical Education is hereby prepared and approved in accordance with 20 U.S.C. 2301 through 2415, the Carl D. Perkins Vocational and Technical Act of 1998, and submitted to the U.S. Secretary of Education for approval. This document shall be referred to as the Kentucky State Plan for Career and~~[Vocational]~~ Technical Education.

Section 2. Incorporation by Reference. (1) The [2001-2004] Kentucky State Plan for Career and~~[Vocational]~~ Technical Education, [May 1, 2000], is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Career and~~[Department for]~~ Technical Education, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. and 4:30 p.m.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation delineates the Office of Career and Technical Education as the agency responsible for developing and approving state plans relating to technical education.

(b) The necessity of this administrative regulation: This regulation is needed to delineate who develops and approves state plans



for technical education and what federal codes and regulations must be adhered to in doing so.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.150 designates the Office of Career and Technical Education as the entity responsible for promulgating administrative regulations necessary to administer, and carry out vocational and technical education programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will clarify which agency is responsible for state plans relating to vocational and technical education.

(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 is necessary to (1) accurately reflect the name of the state agency, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.025 (7) and will correct title changes implemented with reorganization and restructuring of the administrative of office duties.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 (7) and KRS 151B.150 provide that the Office of Career and Technical Education is the entity responsible for (1) approving state plans required by applicable state and federal laws and regulations requisite to receiving federal funding for vocational and technical education and (2) the promulgation of administrative regulations relating to the plan and programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include the state's fifty-five (55) Area Technology Centers, Office of Career and Technical Education administrative personnel, students and prospective students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents and official stationery, so that current, accurate documents may be provided to current and prospective students and all appropriate contacts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes will provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? If any costs are associated with this amendment, funding will be through the General Fund.

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

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

(9) TIERING: Is tiering applied? The amendments are applied uniformly and tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025 (7); 151B.145, 151B.150, 20 U.S.C. 2342

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Workforce Investment Office of Career and Technical Education (Amendment)

##### 780 KAR 2:010. Administration of area technology centers.

RELATES TO: KRS 151B.025(3), [151B.140,] 151B.145[,-EO 2000-990]

STATUTORY AUTHORITY: KRS 151B.025(3)[,-EO 2000-990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.025(3) gives the Office of Career and[~~Department for~~] Technical Education the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational education and technology centers. This administrative regulation establishes the administrative functions of the state-operated area technology centers.

Section 1. Administration of state-operated area technology centers shall be managed through the Office of Career[~~Department for~~] Technical Education. All services and activities shall be directly related to the statutory mission of the Education and Workforce Development Cabinet, Office of Career and[~~Department for~~] Technical Education, and the Kentucky State Plan for Career and[~~Vocational~~] Technical Education, as incorporated by reference in 780 KAR 1:010.

Section 2. Area technology centers shall be operated by either:

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- (1) The Office of Career and~~[Department for]~~ Technical Education; or
- (2) The local board of education that holds title to the facility.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes that the Office of Career and Technical Education has the responsibility for administrative function of the state in relation to management, control and operation of Area Technology Centers.

(b) The necessity of this administrative regulation: This regulation is necessary for establishing the responsibility of administrative functions, management, and control of area technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.025 designates the Office of Career and Technical Education as the entity responsible for the management of area technology centers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will clarify which agency is responsible for administration of area technology centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency, (2) cite the appropriate statutory provisions (3) delete references to old executive orders and repealed statutes, and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation are necessary to provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will correct title changes implemented with reorganization and restructuring of the administrative staff and to reflect a more accurate title of current training efforts.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 gives the Office of Career and Technical Education the responsibility for administration of state-operated area technology centers.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Cen-

ters, Office of Career and Technical Education administrative personnel, students and prospective students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments will make necessary the changes of titles in existing documents and stationery. The majority of which is computerized.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents and official stationery, so that current, accurate documents may be provided to current and prospective students and all appropriate contacts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This regulation, as amended, shall not generate an increase in fees or funding. There are no fees or funding needed to implement these amendments.

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

(9) TIERING: Is tiering applied? The amendment is applied uniformly and tiering was not applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025 (3) and 151B.145

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

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

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

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

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:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Workforce Investment Office of Career and Technical Education (Amendment)

#### 780 KAR 2:060. Discipline of students.

RELATES TO: KRS 151B.025(3), 158.150[~~EO-2000-990~~]  
STATUTORY AUTHORITY: KRS 151B.025(3)[~~EO-2000-990~~]  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.025(3) gives the Office of Career and~~[Department for]~~ Technical Education the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area ~~[vocational education and]~~ technology centers. KRS 151B.050 authorizes ~~[EO-2000-990 abolished the State Board for Adult and Technical Education and transferred the board's duties and functions to the department. It also authorized]~~ the Executive Director~~[commissioner]~~ of the office~~[department]~~ to promulgate administrative regulations to implement career and technical~~[vocational]~~ education in Kentucky. KRS 158.150 establishes the grounds and procedures for discipline from the state's common schools. This administrative regulation establishes the procedure for the suspension and expulsion of students from Kentucky TECH schools for disciplinary reasons following the grounds and procedures established in KRS 158.150 for the common schools.

Section 1. Definition. "Kentucky TECH" means the system of state-operated secondary career and technical education programs.

Section 2. Teachers and administrators employed in a Kentucky TECH school shall be responsible for the supervision and discipline of students during the time the students are in attendance at a state-operated vocational-technical facility.

Section 3. All students shall comply with the policies of the Kentucky TECH school in which they are enrolled. The following actions shall be cause for disciplinary suspension or expulsion:

- (1) Willful disobedience or defiance of the authority of a teacher~~[teachers]~~ or administrator~~[administrators]~~;
- (2) Assault, battery or abuse of another student~~[other students]~~ or school personnel;
- (3) Threat of force or violence;
- (4) Use or possession of illicit drugs or alcohol;
- (5) Stealing, destroying or defacing school or personal property;
- (6) Possessing or using a dangerous weapon~~[weapons]~~ or instrument~~[instruments]~~; or
- (7) Other incorrigible bad conduct on school property or at school-sponsored activities.

Section 4. (1) Any secondary student~~[students who are]~~ subject to disciplinary action shall be referred by the school administrator of a Kentucky TECH school to the principal of the parent school in which the student is enrolled.

(2) The Kentucky TECH school administrator or his designee shall have the authority to immediately suspend secondary students for a maximum of three (3) days, without action by the parent school, to:

- (a) Protect persons or property; or
- (b) Avoid disruption of the ongoing academic programs.
- (3) The Kentucky TECH school administrator shall submit in writing to the principal of the parent high school the reason for disciplinary action and recommend any further action.

(4) The principal of the parent high school shall respond to the Kentucky TECH school~~[vocational]~~ administrator as to the action to be taken.

Section 5. A secondary student who is suspended or expelled from a participating local high school shall be suspended or expelled from the Kentucky TECH school in which the student is enrolled.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedure for the suspension and expulsion of students for disciplinary reasons.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the criteria, process by which a student may be expelled.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.025 designates the Office of Career and Technical Education as the entity responsible for promulgating administrative regulations necessary to administer and carry out career and technical education training.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies which agency is responsible for establishing guidelines for implementing procedures relating student discipline in area technology centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, and (4) conform to the requirements of KRS Chapter 13A..

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.025 (3) and will correct title changes implemented with reorganization and restructuring of the administrative staff.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 (3) provides that the Office of Career and Technical Education is the entity responsible for the

promulgation of administrative regulations relating to student discipline in area technology centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, students and prospective students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to current and prospective students and all appropriate contacts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

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

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025 (3); 158.150

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Workforce Investment Office of Career and Technical Education (Amendment)

#### 780 KAR 2:110. Student medical and accident insurance.

RELATES TO: KRS 151B.025(3), [454B.440;] 151B.175[; EO 2000-990]

STATUTORY AUTHORITY: KRS 151B.025(3), 151B.175(2)[; EO 2000-990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.175(2) authorizes the Executive Director[Commissioner] for the Office of Career and[Department for] Technical Education to provide medical and accident insurance for students enrolled in the state operated secondary area technology centers [and area vocational education centers]. KRS 151B.175(2) requires[and EO 2000-990 require] the Executive Director[Commissioner] of the Office of Career and[Department for] Technical Education to promulgate administrative regulations to implement the insurance program. This administrative regulation establishes the requirements of the student medical and accident insurance program.

Section 1. Definition. (1) "Kentucky TECH" means the system of state-operated secondary technical education programs in the area technology centers.

Section 2. Students enrolled in a Kentucky TECH school, except continuing education and customized business and industry classes, shall have medical and accident insurance coverage during the period of enrollment.

Section 3. The executive director[commissioner] shall enter into a contract with a surety or insurance company or its agent to provide medical and accident insurance coverage for students enrolled in Kentucky TECH.

Section 4. The policy shall:

(1) Be a full excess policy; and

(2) Pay the covered expenses incurred which are in excess of those paid or payable by another plan.

Section 5. The medical and accident coverage shall consist of a single contract applied to the plan of coverage contained in the contract between the Commonwealth and the carrier.

Section 6. Following an authorized signature by an official of the insuring company, the insurance policy shall:

(1) Be attached to the contract; and

(2) Become a part of the medical and accident insurance contract.

Section 7. Coverage shall:

(1) Take effect on the date requested; and

(2) Remain in effect through the expiration date shown on the application.

Section 8. (1) The Office of Career and[Department for] Technical Education shall authorize payment of the premium to:

(a) A surety;

(b) An insurance company; or

(c) An agent thereof.

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(2) The premium shall be based on the average number of students that were enrolled:

- (a) During the previous quarter; and
- (b) In Kentucky TECH schools.

Section 9. Nothing in this administrative regulation shall be construed as a waiver of the sovereign immunity of the Commonwealth.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedure for identifying student medical and accident insurance and providing same to students.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the process by which medical and accident insurance is available to students.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.025 designates the Executive Director of the Office of Career and Technical Education as responsible for promulgating administrative regulations to implement the student medical and accident insurance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies who is responsible for establishing guidelines for implementing procedures relating to acquisition of student medical and accident insurance.

(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 is necessary to (1) accurately reflect the name of the state agency, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders and repealed statutes, and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.025 (3) and will correct title changes implemented with reorganization and restructuring of the administrative staff.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 (3) provides that the Executive

Director of the Office of Career and Technical Education is responsible for the promulgation of administrative regulations relating to implementing the student medical and accident insurance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, students and prospective students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to current and prospective students and all appropriate contacts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees either directly or indirectly are established or increased by these changes.

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025 (3); 151B.175; 151B.175 (2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated as a result of this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated as a result of this amendment.

(c) How much will it cost to administer this program for the first full year? There is no anticipated cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated cost associated with this amendment.

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:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Workforce Investment**  
**Office of Career and Technical Education**  
**(Amendment)**

**780 KAR 2:140. Tuition and fees.**

RELATES TO: KRS 151B.025(3), 151B.165[; EO-2000-990]

STATUTORY AUTHORITY: KRS 151B.025(3), 151B.165[; EO-2000-990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.165 authorizes the Executive Director[~~Commissioner~~] of the Office of Career and[~~Department for~~] Technical Education to set tuition and fees for students in state-operated area [v~~ocational~~ education and] technology centers. KRS 151B.175(2) authorizes the Executive Director[~~EO-2000-990 authorized the commissioner~~] to establish the rate of fees for all secondary students, notwithstanding the provisions of KRS 151B.165, as necessary to meet expenses for student medical and accident insurance. This administrative regulation establishes the tuition and fees for Kentucky TECH schools.

Section 1. Definition. "Kentucky TECH" means the system of state-operated secondary technical education programs in the area technology centers.

Section 2. A nonrefundable application fee of twenty (20) dollars for full-time and part-time students shall be paid prior to enrollment in a diploma or certificate program.

Section 3. The area technology center[~~school~~] may establish an activity or lab fee not to exceed twenty (20) dollars per term for each student[~~students~~].

Section 4. A refund policy shall apply to tuition charges for career and technology[~~vocational-technical~~] programs and classes in Kentucky TECH schools. Any student[~~Students~~] in a certificate or diploma program[~~programs~~] may receive a partial refund of tuition within the first fifteen (15) school days of the program through withdrawal. The refund policy shall apply to program withdrawal and shall not apply to a reduced course load. The application fee shall be nonrefundable.

Section 5. Within the first ten (10) instructional days of the program, students may receive a full tuition and activity fee refund. From eleven (11) to fifteen (15) instructional days, fifty (50) percent of the tuition shall be refundable. There shall not be a refund after the 15th instructional day.

Section 6. Continuing education classes for adults shall be designed to meet the needs of the labor market and for persons preparing or supplementing knowledge and skills for employment or job advancement. The cost for all continuing education offered in the regular curriculum shall be at the state-approved tuition rates. Specialized continuing education classes for adults may be offered on a cost recovery basis.

Section 7. A student[~~Students~~] enrolled in a continuing education course[~~courses~~] may be granted a full tuition refund if official withdrawal is completed prior to the third class session. A refund

shall not be made after the third session, and tuition of fifteen (15) dollars or less shall not be refunded.

Section 8. Costs for classes to meet industry training needs in a school or region may be negotiated by the school or region on a shared-cost basis documented by a written agreement on file in the school where the contract is negotiated. Any agreement with public or private organizations shall seek to recover the instructional cost and may be for class size projects, extra services, and ancillary services as requested by the client. Training programs contracted at the state level to meet statewide training needs for industry shall establish a fee under written agreement.

Section 9. A fifteen (15) dollar fee shall be charged for each live work project requiring more than one (1) hour labor and accepted by the school in accordance with 780 KAR 2:040.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the tuition and fees for students in state-operated area technology centers.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the tuition and fees for students in state-operated area technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.025 designates the Executive Director of the Office of Career and Technical Education as responsible for setting tuition and fees for students in area technology centers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies responsibility for establishing the fees and tuition in area technology centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to (1) accurately reflect the name of the state agency, (2) cite the appropriate statutory provisions, (3) delete references to old executive orders, and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.

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(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.025 (3) and will correct title changes implemented with reorganization and restructuring of the administrative staff.

(d) How the amendment will assist in the effective administration of the statutes: This amendment complies with KRS 151B.025 (3) and will correct title changes implemented with reorganization and restructuring of the administrative staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, students and prospective students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to current and prospective students and all appropriate contacts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees either directly or indirectly are established or increased by these changes.

(9) TIERING: Is tiering applied? (Explain why or why not) This amendment is applied uniformly and tiering was not applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.025 (3); KRS 151B.165

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

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

fire departments, or school districts) for the first year? No revenue will be generated through these amendments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated through these amendments.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Workforce Investment Office of Career and Technical Education (Amendment)

#### 780 KAR 3:010. Classification plan.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director~~[State Board for Adult and Technical Education]~~ to promulgate comprehensive administrative regulations, consistent with the provisions of KRS 151B.035, which govern the classification plan for certified and equivalent staff in the Office of Career~~[Department for Adult]~~ and Technical Education so that the same qualifications may reasonably be required for all positions in the same job classification and the same schedule of pay equitably applied in accordance with requirements of the statutes.

Section 1. Interpretation of Class Specifications. (1) Class specifications shall be~~[are]~~ descriptive and explanatory. They shall be~~[are]~~ designed to indicate the kinds of positions which shall~~[should]~~ be allocated to the various job classifications as determined by their characteristics and duties or responsibilities.

(2) Characteristics of a class shall be~~[are]~~ general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities shall~~[are]~~ not ~~[to]~~ be construed as describing what the duties or responsibilities of any position shall be and ~~[are]~~ not ~~[to]~~ be construed as limiting the Executive Director's~~[Commissioner's]~~ ability to take, add to, or otherwise alter the duties and responsibilities of a position. The use of an individual expression or illustration as to duties or responsibilities shall not be regarded as excluding assignments of others not mentioned which are of similar kind of quality.

(4) Minimum requirements shall be~~[are]~~ comprehensive statements of the minimum background as to education, experience, and other qualifications which shall~~[will]~~ be required in all cases as evidence of an appointee's ability to perform the work properly.

Section 2. Official Copy of Class Specifications. (1) The Office of Career~~[Department for Adult]~~ and Technical Education shall maintain a master set for all approved class specifications. The~~[Such]~~ specifications shall constitute the official class specifications for the classification plan. The copies of the specification for each job classification shall indicate the date of adoption or the last revision of the specification.

(2) The Office of Career~~[Department for Adult]~~ and Technical Education shall provide class specifications for inspection to any employee or the public under reasonable conditions during regular business hours.

Section 3. Title of Position. The title of the job classification to which a position has been allocated shall be used to designate that~~[such]~~ position in all payroll and other official records, docu-

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ments, vouchers, and communications in connection with all personnel processes. For purposes of internal administration or for any other purpose, not involving the personnel processes, any office title, abbreviation or code symbol may be used in lieu of the class title.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation gives the Executive Director authority to establish a classification plan for certified and equivalent staff in the Office of Career and Technical Education.

(b) The necessity of this administrative regulation: This regulation is necessary to establish criteria for classifications to assure continuity in the classifications relating to interpretation of class specifications, requirements, titles, class specifications, job duties, and characteristics of the class.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education as the entity responsible for promulgating administrative regulations necessary to administer and carry out career and technical education training.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies which agency is responsible for establishing guidelines for implementing the classification plan for certified and equivalent staff in the Office of Career and Technical Education.

(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 is necessary to (1) accurately reflect the name of the state agency, (2) correctly reflect personnel titles, and (3) conform to KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization and restructuring of the administrative staff.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.025 (3) provides that the Executive Director of the Office of Career and Technical Education is respon-

sible for the promulgation of administrative regulations relating to a classification plan for certified and equivalent staff..

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to current and prospective employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

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

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.



(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Workforce Investment**  
**Office of Career and Technical Education**  
**(Amendment)**

**780 KAR 3:020. Compensation plan.**

RELATES TO: KRS 151B.035, 161.605

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director~~[Commissioner]~~ of the Office of Career and~~[Department for]~~ Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035 which govern the pay plan for all certified and equivalent staff and unclassified staff ~~[in the Department for]~~. This administrative regulation establishes the compensation plan for employees of the Office of Career and~~[Department for]~~ Technical Education.

Section 1. (1) Appointments. A new certified or equivalent employee or reentering certified or equivalent employee shall be appointed at the salary specified on the Minimum Salary Schedule for Certified and Equivalent Staff commensurate with education rank and experience. An employee in an administrative position may be provided an index adjustment commensurate with the scope of administrative or supervisory responsibility in addition to the base salary as specified for the particular job classification.

(2) A retired certified or equivalent employee returning to work in a position covered by the Kentucky Teachers' Retirement System shall not be placed on the salary schedule referenced in this section, but shall be paid pursuant to the requirements of KRS 161.605(1) and (2).

Section 2. Salary Adjustments. (1) Promotion.

(a) A certified or equivalent employee who is promoted shall receive a salary increase of five (5) percent unless his current salary is beyond the minimum on the salary schedule. If the employee's salary is above the minimum, the five (5) percent increase shall be at the discretion of the appointing authority.

(b)1. A certified or equivalent employee promoted to an unclassified position in the Office of Career and~~[Department for]~~ Technical Education shall receive a salary increase of five (5) percent upon promotion unless his current salary is beyond the minimum. If the employee's salary is above the minimum, the salary increase shall be at the discretion of the appointing authority. 2. The employee's salary shall not be below the minimum rate of the higher classification following promotion.

3. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the executive director~~[commissioner]~~ may grant upon promotion a ten (10) percent to twenty (20) percent salary increase over the employee's previous salary.

(2) Demotion.

(a) A certified or equivalent employee in the Office of Career and~~[Department for]~~ Technical Education who is demoted shall have his salary adjusted to not more than sixty (60) percent above the proper cell. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion.

(b) An unclassified employee in the Office of Career and~~[Department for]~~ Technical Education who is demoted to a certified or equivalent position shall have his salary adjusted to not more than sixty (60) percent above the proper cell. This salary

shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion.

(3) Rank changes. A certified or equivalent employee shall have a salary adjustment retroactive to July 1 for educational rank changes which are confirmed by September 30<sup>[4]</sup> of each year.

(4) A certified or equivalent employee who administers the National Occupational Competency Testing Institute Performance Test on a Saturday shall be paid fifty (50) dollars per hour to administer the exam.

(5) A certified or equivalent employee shall be paid at a rate of seventy-five (75) dollars per lesson plan for each lesson plan that is utilized as a model for other classes.

(6) A certified or equivalent employee shall be compensated for participating in specific projects relating to professional or curriculum development, staff exchange, and the integration of academics in career and technical education outside of normal working hours. The rate or payment shall be determined in the approved project proposal.

(7) Other salary adjustments. (a) The Executive Director~~[Commissioner]~~ for the Office of Career and Technical Education may authorize performance bonuses in lump sum payments for outstanding job performance for nonprobationary status employees in any fiscal year in which monies are available.

(b) A full-time permanent employee working as a dual appointment in the certified or equivalent employment may be paid equal to the hourly rate of his full-time position salary, up to one and five-tenths (1.5) times that hourly rate.

Section 3. Salary Advancements. (1) The Minimum Salary Schedule for Certified and Equivalent Staff shall be adjusted by September 30 of each year. All certified and equivalent staff shall receive a salary increase not less than the percentage increase provided other state employees. This increase shall be provided July 1. Salary adjustments for those entitled employees shall be retroactive to July 1 of each year once the salary schedule is confirmed by September 30 of each year.

(2) Annual salary increments for unclassified employees shall occur commensurate with each person's established increment date.

Section 4. Paid Overtime. If applicable, certified and equivalent employees and unclassified employees shall be awarded overtime payments in accordance with the Fair Labor Standards Act, 29 US sec. 201 et seq.

Section 5. Incorporation by Reference. (1) "The Minimum Salary Schedule for Certified and Equivalent Staff", July 1, 2007~~[2005]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workforce Investment, Office of Career and Technical Education, Division of Human Resources, 500 Mero, Second Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20<sup>th</sup> Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation requires the Executive Director of the Office of Career and Technical Education to promulgate administrative regulations which will govern the pay plan for certified and equivalent staff.

(b) The necessity of this administrative regulation: This regulation is necessary to establish criteria for developing salary schedules, and for salary placement of new employees, salary adjustments for promotions, rank changes, demotions,

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgating administrative regulations relating to the pay plan for certified and equivalent staff.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies which agency is responsible for establishing guidelines for implementing the pay plan for certified and equivalent staff in the Office of Career and Technical Education.

(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 is necessary to (1) accurately reflect the name of the state agency, (2) correctly reflect personnel titles, (3) add statement relative to payment of test administrator for NOCTI testing, (4) add statement relative to pay rate for development of lesson plans utilized by the Office as a model, (5) add statement relative to compensation for participating in specific projects, (6) add statement relating to payment for dual employment, and (7) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts, and to set forth payment amounts for specific supplemental projects or work.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization and restructuring of the administrative staff.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 provides that the Executive Director of the Office of Career and Technical Education is responsible for the promulgation of administrative regulations relating to a pay plan for certified and equivalent staff..

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to certified and equivalent employees and provide appropriate payment for specified projects or testing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): Costs related to the updating of forms, documents and stationery shall be at no or negligible cost, as the forms, documents and stationery are generated via computer template. Costs associated with pay rates relating to testing, development of lesson plans, and specific projects shall be through Federal funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes will provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

(a) Initially: Costs related to the updating of forms, documents and stationery shall be at no or negligible cost, as the forms, documents and stationery are generated via computer template. Costs associated with pay rates relating to testing, development of lesson plans, and specific projects shall be through Federal funds.

(b) On a continuing basis: Costs related to the updating of forms, documents and stationery shall be at no or negligible cost, as the forms, documents and stationery are generated via computer template. Costs associated with pay rates relating to testing, development of lesson plans, and specific projects shall be through Federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Costs related to the updating of forms, documents and stationery shall be at no or negligible cost, as the forms, documents and stationery are generated via computer template. Costs associated with pay rates relating to testing, development of lesson plans, and specific projects shall be through Federal funds.

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

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

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035; 161.605

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Workforce Investment**  
**Office of Career and Technical Education**  
**(Amendment)**

**780 KAR 3:030. Appointments.**

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director[State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies[specified] that the Executive Director[State Board for Adult and Technical Education] promulgate comprehensive administrative regulations for the certified and equivalent personnel system.

Section 1. Notice of Classes, Minimum Qualifications, and Vacancies. (1) An official list developed by the Division of Human Resources[Personnel Services] of all classifications and minimum qualifications shall be posted in each area business office[regional office] and each division office for public review.

(2) All vacancies shall be posted in all facilities on a statewide[region-wide] basis for a minimum of ten (10) days. Under emergency or other extenuating circumstances, the executive director[commissioner] may change the posting requirement. The vacancy posting shall be on a form as prescribed by the Executive Director of the Office of Career[Commissioner of Adult] and Technical Education and shall contain the title, minimum qualifications, and other pertinent information about the vacancy[vacancies]. The Executive Director[commissioner] shall be responsible for developing and implementing a procedure of announcing vacancies on a statewide basis.

Section 2. Establishment and Abolishment of Positions. The appointing authority or his designee shall establish and abolish positions consistent with the provisions of KRS 12.060 and the classifications and compensation plan of the certified and equivalent personnel system.

Section 3. Filing Applications. Each application[All applications] shall be made on a form[forms] prescribed by the executive director[commissioner]. The application[All applications] shall be signed and the truth of the statements therein[contained herein] certified by a signature[such signatures] under penalty of removal for falsification and any[such] criminal penalties as may apply. The Executive Director[commissioner] may authorize individuals to verify work experience and educational attainment of an applicant[applicants] for a position[positions] in the certified and equivalent personnel system. The application shall be consistent with the state and federal equal employment opportunity guidelines.

Section 4. Minimum Qualifications for Filing. A position[All positions] shall be filled by an applicant[applicants] who meets[meet] the standards or requirements prescribed by the Executive Director[commissioner] with regard to education and experience and any[such] other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

Section 5. Selection of Employees. The appointing authority or his designee shall make final selection of an employee[employees] based on a composite list of regional and statewide applicants for the position. Each area business[regional office] shall maintain a list of qualified applicants for the filling of positions. The Division of Human Resources[Personnel Services] shall maintain a central referral list which shall be compiled and submitted to area business[regional offices] for inclusion in the consideration of qualified applicants.

Section 6. The appointing authority or his designee shall fill an appointment[appointments] through the consideration of a list of recommendations submitted by a designated interview committee composed of no less than three (3) or more than seven (7) members, supervisory recommendations and/or peer recommendations. The procedure for determining the composition of the designated interview committee shall be determined by the appointing authority or his designee. The committee shall make recommendations to the designated Office of Career[Department for Adult] and Technical Education official as determined by the appointing authority. When deemed in the best interest of the Commonwealth, the appointing authority may not utilize an interview committee.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20<sup>th</sup> Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies the Executive Director promulgate comprehensive administrative regulations for the certified and equivalent personnel system.

(b) The necessity of this administrative regulation: This regulation is needed to establish guidelines for developing a system for appointment of employees, from vacancies to appointments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for promulgating administrative regulations relating to appointments in the certified and equivalent personnel system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies who is responsible for establishing guidelines for implementing the appointment process for certified and equivalent personnel system.

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

(a) How the amendment will change this existing administrative regulation; This amendment is necessary to (1) accurately reflect the name of the state agency, (2) correctly reflect personnel and office titles, (3) delineate who shall be responsible for final selection or appointment of employees, and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and properly delegate authority for employment decisions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization and restructuring of the agency's staff.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 provides that the Executive Director of the Office of Career and Technical Education is responsible for the promulgation of administrative regulations relating to appointments in certified and equivalent personnel system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to current and prospective employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official documentation and employment practices.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees either directly or indirectly are established or increased by these changes.

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035

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

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

fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Workforce Investment Office of Career and Technical Education (Amendment)

#### 780 KAR 3:035. Employee evaluations.

RELATES TO: KRS 151B.035(3)(i)(k), 151B.075  
STATUTORY AUTHORITY: KRS 151B.035(3)(i)(k), 151B.075(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3)(i)(k) requires the Executive Director[State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations for the certified and equivalent staff governing employee evaluations. KRS 151B.075(1) requires the Executive Director[State Board] to adopt written evaluation procedures for all certified and equivalent employees. This administrative regulation establishes the requirements for employee evaluations for certified and equivalent employees.

Section 1. General Provisions. (1) Evaluations of school administrators shall be conducted in accordance with the "Performance Evaluation Criteria and Procedures for School Administrators", revised 7/2008[44/93], published by the Office of Career and[Department for] Technical Education [and the Department for Adult Education and Literacy].

(2) Evaluations of instructors shall be conducted in accordance with the "Performance Evaluation Criteria and Procedures for Instructors", revised 7/2007[44/93], published by the Office of Career and[Department for] Technical Education [and the Department for Adult Education and Literacy].

(3) Evaluations of certified, equivalent and central office staff shall be conducted in accordance with the "Performance Evaluation Criteria and Procedures for Other Certified, Equivalent and Central Office Staff", revised 11/93, published by the Office of Career and[Department for] Technical Education [and the Department for Adult Education and Literacy].

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

(a) "Performance Evaluation Criteria and Procedures for School Administrators", revised 7/2008[44/93];

(b) "Performance Evaluation Criteria and Procedures for Instructors", revised 7/2007[44/93]; and

(c) "Performance Evaluation Criteria and Procedures for Other Certified, Equivalent and Central Office Staff", revised 11/93.

(2) This material may be inspected, copied, or obtained at the Division[Office] of Human Resources[Personnel Services], Education and Workforce Development Cabinet, Capital Plaza Tower, Second Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies that the Executive Director adopt written evaluation procedures for certified and equivalent employees and establishes requirements for evaluations.

(b) The necessity of this administrative regulation: This regulation is needed to establish criteria for developing performance evaluation procedures for certified and equivalent employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for adopting written evaluation procedures for certified and equivalent employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies who is responsible for establishing guidelines for implementing performance evaluation procedures for certified and equivalent personnel system.

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

(a) How the amendment will change this existing administrative regulation; This amendment is necessary to (1) accurately reflect the name of the state agency, (2) correctly reflect personnel and office titles implemented with reorganization and restructuring, (3) correct referenced sections of statutes, and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization and restructuring of the administrative staff.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 provides that the Executive Director of the Office of Career and Technical Education is responsible for adopting written evaluation procedures and requirements for certified and equivalent employees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to current and prospective employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The title changes will provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees either directly or indirectly are established or increased by these changes.

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Employment and Training.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035 (3) (j); 151B.075

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated through this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated through this amendment.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Workforce Investment Office of Career and Technical Education (Amendment)

#### 780 KAR 3:040. Special appointments.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director~~[State Board for Adult and Technical Education]~~ to promulgate comprehensive administrative regulations consistent with KRS 151B.035, which govern the various types of appointments, such as probationary, emergency, seasonal, temporary, and other ~~[such]~~ administrative regulations not inconsistent with KRS 151B.035 as may be proper and necessary.

Section 1. Filling of Vacancies. All vacancies in the certified and equivalent personnel system which are not filled by promotion, transfer, demotion, or probationary appointment shall be filled by reemployment, reinstatement, seasonal appointment, temporary appointment, or emergency appointment.

Section 2. Seasonal, Temporary, and Emergency. Seasonal, temporary, and emergency appointments may be made by the appointing authority or his designee~~[commissioner]~~ without regard for the minimum requirements of the position.

Section 3. Detail to Special Duty. When the services of a limited or continuing status employee are needed in a position other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the appointing authority or his designee~~[commissioner]~~. For detail to special duty, the appointing authority or his designee~~[commissioner]~~ may waive the minimum requirements.

Section 4. Dual Appointments. The appointing authority or his designee~~[commissioner]~~ may authorize appointments of employees serving in two (2) positions.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation requires the Executive Director promulgate comprehensive admin-

istrative regulations which govern special appoints, such as probationary, emergency, seasonal, temporary and others as may be proper and necessary.

(b) The necessity of this administrative regulation: This regulation establishes the responsibility for developing a plan for identifying and processing special appointments in the certified and equivalent personnel system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for developing a plan for processing special appointments for certified and equivalent personnel system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies who is responsible for establishing guidelines for processing special appointments for the certified and equivalent personnel system as well as who has final authority regarding appointments or special duty.

(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 is necessary to (1) accurately reflect the name of the state agency, (2) correctly reflect personnel and office titles and approval authority implemented with reorganization and restructuring, (3) correct referenced sections of statutes, and (4) conform to the requirements of KRS Chapter 13A..

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and properly delegate authority for decisions relating to appointments or special duty.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization and restructuring of the agency's staff.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 provides that the Executive Director of the Office of Career and Technical Education is responsible for developing procedures and requirements for special appointments for the certified and equivalent personnel system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to current and prospective employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes will provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official documentation and employment practices.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees either directly or indirectly are established or increased by these changes.

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated through this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated through this amendment.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Workforce Investment Office of Career and Technical Education (Amendment)

#### 780 KAR 3:050. Employment lists.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Executive Director~~[State Board for Adult and Technical Education]~~ to promulgate comprehensive administrative regulations which govern personnel rules for certified and equivalent employees in the Office of Career~~[Department for Adult and Technical Education]~~. KRS 151B.035 requires any recommendation for employment be based on guidelines promulgated by the Executive Director~~[state board]~~.

Section 1. Notification of Vacancies. It shall be the duty of the Administrative Business Office~~[Kentucky Tech Regional Executive Director]~~ to notify the Executive Director~~[Commissioner]~~ or the Director of Human Resources~~[Personnel Services]~~ as far in advance as possible of vacancies in full-time or part-time certified and equivalent positions.

Section 2. Use of Employment Lists. The executive director~~[commissioner]~~ shall authorize the Director of Human Resources~~[designated Kentucky Tech Regional Executive Director]~~ to maintain lists of all qualified applicants for open positions ~~[within each respective region]~~. These lists shall be used as an available pool of qualified applicants when filling positions.

(1) ~~[Kentucky Tech Regional Executive Directors shall keep a separate file for one (1) year of all applicants for positions. Applications shall be purged at the conclusion of one (1) year from the date of the application.]~~

(2) The Division of Human Resources~~[Personnel Services]~~ shall maintain lists of all qualified applicants for central office vacancies ~~for~~in the Office of Career~~[Department for Adult and Technical Education]~~.

(2)~~[(3)]~~ Employment lists shall include all current active employees who wish to be considered for other positions.

Section 3. Replenishment of Lists. The employment lists shall be replenished by walk-in applicants or by respondents to advertisement or vacancy notices for specific positions.

Section 4. Reemployment Lists. The Executive Director~~[commissioner]~~ shall authorize the Division of Human Resources~~[designated Kentucky Tech Regional Executive Director]~~ to maintain lists of all former employees who qualify for reemployment. These employees shall be considered when an appropriate vacancy occurs.

JOHN MARKS, Executive Director

APPROVED BY AGENCY: December 10, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the offices of the Education and Workforce Development Cabinet, 500 Mero Street, Capitol Plaza Tower, 20th Floor, Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than January 20, 2009, 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 February 2, 2009. 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 Marks, Executive Director; Office of Career and Technical Education; 500 Mero Street; Capital Plaza Tower, 20th Floor; Frankfort, Kentucky 40601, phone (502) 564-3022, fax (502) 546-2241.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: John Marks, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation designates that any recommendation for employment be based on guidelines promulgated by the Executive Director.

(b) The necessity of this administrative regulation: This regulation establishes the responsibility for developing a plan for receiving applications and to establish and maintain employment lists for the certified and equivalent personnel system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.035 designates the Executive Director of the Office of Career and Technical Education responsible for developing a plan for receiving applications and establishing and maintaining employment lists for the certified and equivalent personnel system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies who is responsible for establishing guidelines for receiving

applications and establishing and maintaining employment lists for the certified and equivalent personnel system.

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

(a) How the amendment will change this existing administrative regulation; This amendment is necessary to (1) accurately reflect the name of the state agency, (2) correctly reflect personnel and office titles implemented with reorganization and restructuring, (3) delete information associated with reorganization and restructuring, and (4) conform to the requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation provide continuity of titles relating to reorganization and related supporting documentation and to be more in-line with current training trends and efforts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 151B.035 and will correct title changes implemented with reorganization and restructuring of the administrative staff.

(d) How the amendment will assist in the effective administration of the statutes: KRS 151B.035 requires that the Executive Director of the Office of Career and Technical Education is responsible for developing procedures and requirements for establishing and maintaining employment lists for the certified and equivalent personnel system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected include: 55 Area Technology Centers, Office of Career and Technical Education administrative personnel, and instructors.

(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 Area Technology Centers and Office of Career and Technical Education administrative personnel shall make the necessary title changes to all existing documents, and official stationery, so that current, accurate documents may be provided to current and prospective employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs shall be at no or negligible cost..

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes shall provide an accurate reflection of the Cabinet's reorganization and ensure consistency in all necessary and official forms, documents and stationery.

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

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

(b) On a continuing basis: This regulation, as amended, shall not generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? This regulation, as amended, shall not generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees either directly or indirectly are established or increased by these changes.

(9) TIERING: Is tiering applied? This amendment is applied uniformly and tiering was not applied.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education and Workforce Development Cabinet, Department for Workforce Investment, Office of Career and Technical Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.035

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated through this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated through this amendment.

(c) How much will it cost to administer this program for the first full year? There is no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with this amendment.

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:

## LABOR CABINET Department of Workers' Claims (Amendment)

### 803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS 342.020, 342.035, 342.315

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Executive Director of the Office of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes[regulates] hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Hospital" means a facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty center which is licensed pursuant to KRS 216B.105.

(2) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.

(3) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Workers' Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital.

(4) ["Unbundling" means the practice of submitting separate bills for services to a payor pursuant to this administrative regulation which are billed to payers other than pursuant to this administrative regulation on a global basis.



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(5) "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item.

(6) "New hospital" means a hospital which has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for each hospital for each compensable service or supply provided on or after February 2, 1993[the effective date of this administrative regulation.]

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 [376] and utilized in 907 KAR 1:820 and 1:825 [907 KAR 1:013] on file as of October 31 of each calendar year.

(b) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-8, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552.

(c)(2) The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132% except that a hospital with more than 400 licensed acute care beds or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

(d)1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:

a. Has more than 400 licensed acute care beds;

b. Is designated as a Level I trauma center by the American College of Surgeons; or

c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services.

(2)(a) Except as provided in paragraph (b) of this subsection, the [addition of twelve (12) percentile.

(3) A hospital's adjusted cost-to-charge ratio shall not exceed eighty-five (85) percentile, including the twelve (12) percentile addition, except for a hospital that services seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health Services, Department of Medicaid Services. The adjusted cost-to-charge ratio for a hospital that services seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed ninety-seven (97) percentile.

(4) The reimbursement to a hospital for services or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total [allowable] charges by its adjusted cost-to-charge ratio.

(b) If part of a bill for services or supplies is alleged to be non-compensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the non-contested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the commissioner[executive director] by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner[Executive Director] of the Department [Office] of Workers' Claims.

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the commissioner[executive director] no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1)(a) The commissioner [executive director] shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b) A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals [of eighty (80) percentile] until it has been in operation for one (1) full fiscal year.

(c) A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. Seventy (70) percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center; or

b. If no acute care hospital is located in the county of the ambulatory surgery center, seventy (70) percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located; and

3. All other hospitals not specifically mentioned in subparagraphs 1 and 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties [of eighty (80) percentile].

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner [executive director].

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), [uniform billing form] as required by 803 KAR 25:096 [pursuant to KRS Chapter 216].

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as [billing form] required by 803 KAR 25:096 [pursuant to KRS Chapter 216].

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner [executive director] setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services [forms] required by 803 KAR 25:096 [pursuant to KRS Chapter 216] when billing for professional services and shall be compensated pursuant to the Workers' Compensation [Kentucky] Medical Fee Schedule for Physicians incorporated by reference in [adopted pursuant to] 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service,

but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is directly compensated for services by the contracting hospital [in these circumstances].

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital. ~~[(4) Unbundling shall not be practiced.]~~

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2009, at 1:30 p.m. (EST) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Thomas A. Dockter or Karen T. Meier, Staff Attorneys, Office of General Counsel, Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, fax (502) 564-0681.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Thomas A. Dockter and Karen T. Meier

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the hospital fee schedule and regulates hospital fees and supplies provided to workers' compensation patients.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the Department of Workers' Claims is charged with the duty of setting fee schedules, and KRS 342.020 requires that hospital treatment be reimbursed on behalf of injured workers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth how hospital fees and supplies are reimbursed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements for charging and reimbursing for hospital treatment of injured employees.

(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 Department of Workers' Claims will recalculate the cost-to-charge ratios to keep all charges at certain levels and avoid the impact of enormous markups for individual services. This approach should protect claimants, insurance carriers, and avoid a huge administrative burden on hospitals.

(b) The necessity of the amendment to this administrative regulation: It is imperative to keep medical costs within the workers' compensation system comparable to health insurance costs. Some charges for implants and DME had been five (5) times the costs of the equipment. The fees must be fair, current, and reasonable in comparison to fees paid by health insurers according to KRS 342.035. The new calculations for the hospital's cost-to-charge ratios should make the fees fair and reasonable without having a specific carve-out.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments make the fees fair, current, and reasonable for similar treatment as paid by health insurers.

(d) How the amendment will assist in the effective administration of the statutes: The certainty of these hospital charges should reduce medical fee dispute issues in this area. Hospitals will avoid administrative costs. Claimants and insurance carriers will get more consistent charges from hospitals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Injured employees, hospitals, medical providers, insurance carriers, self-insurance groups, individual self-insurers and third party administrators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Workers' Claims will calculate the hospital cost-to-charge ratio pursuant to the new calculation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Some hospitals will receive a different cost-to-charge ratio which is designed to provide fair and consistent charges.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance carriers, self-insured groups and individual self-insured employers will receive consistent prices for hospital services. Anytime medical costs are reduced, employers could benefit on workers' compensation insurance policies.

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

(a) Initially: The Department of Workers' Claims will use normal budget to implement administrative regulation. There would be no cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims' budget will be used which is restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees or funding will be increased. Payments to hospitals may be reduced and for some they may be increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Hospitals cost-to-charge ratios are adjusted by new calculation. This should result in more consistent and fair charges.

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to all hospitals and other parties in an equal manner to a workers' compensation claim.

#### 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 parts of government with employees

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035

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. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers. Pursuant to KRS 342.035,

the fee schedule is designed to be similar to commercial costs for similar procedures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated.

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

(d) How much will it cost to administer this program for subsequent years? No new administration 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:

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Agent Licensing  
(Amendment)**

**806 KAR 9:070. Examinations.**

RELATES TO: KRS 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-320, 304.9-430, 304.15-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-160(1) requires the executive director to promulgate administrative regulations developing and conducting examinations required by Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-230(2) requires the executive director to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.15-700(2)(a) requires the executive director to promulgate administrative regulations regarding the required training and examination for life[viatical] settlement brokers, and KRS 304.15-270 authorizes the executive director to promulgate regulations to implement KRS 304.15-700 through 304.15-720. This administrative regulation restricts the number of times an applicant for an agent's, life settlement[viatical] broker's, consultant's, or adjuster's license may take the appropriate examination required by the Kentucky Insurance Code, as defined in KRS 304.1-010[304.1-020], or administrative regulations promulgated there under, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

Section 1. Definitions. (1) "Examination" means a written examination required to license an applicant in accordance with KRS Chapter 304 for an adjuster, agent, consultant, or life[viatical] settlement broker license.

(2) "Commissioner" means the Commissioner of the Department of Insurance. ["Executive Director" means the Executive Director of the Office of Insurance.]

(3) "Department" means the Department of Insurance.

(4) "License" is defined by KRS 304.1-110(2). [(4) "Office" means the Office of Insurance.]

Section 2. A completed "NAIC Uniform Individual Licensing Application", incorporated by reference in 806 KAR 9:340, [written application] for the examination and documentation demonstrating successful completion of any required prelicensing training shall be

filed with the commissioner[executive director] by, or on behalf of, the applicant, prior to the date scheduled for the examination. The application shall be accompanied by fees specified in KRS 304.4-010 or 806 KAR 4:010.

Section 3. Every applicant for a license who is required to take an [a-written] examination shall answer correctly seventy (70) percent of the questions to successfully pass the examination.

Section 4. An applicant who takes an examination required by KRS Chapter 304 shall be permitted to take or retake an examination a total of three (3) times within 120 days of the receipt of an application by the commissioner[executive director]. Applicable fees, as set out in KRS 304.4-010 and 806 KAR 4:010, Section 1(15), shall be submitted with the request to retake the examination. The request shall be made on an "Examination Retake Form", incorporated by reference in 806 KAR 9:340.

Section 5. An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete examinations as follows:

- (1) For life line of authority, a life examination;
- (2) For health line of authority, a health examination;
- (3) For property line of authority, a property examination;
- (4) For casualty line of authority, a casualty examination;
- (5) For personal lines, a property and casualty personal lines examination;
- (6) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and
- (7) For variable life and variable annuity products, no examination is required.

Section 6. (1) The provisions of this administrative regulation shall apply to every individual resident applicant for a limited line of authority identified in KRS 304.9-230(1).

(2) An individual applying for limited lines of authority as identified in KRS 304.9-230 shall successfully complete examinations as follows:

- (a) For surety limited line of authority, a surety examination;
- (b) For travel limited line of authority, a travel examination;
- (c) For crop limited line of authority, a crop examination; and
- (d) For limited lines credit limited line of authority, no examination is required.

Section 7. An individual applying for a life[viatical] settlement broker license shall successfully complete a life[viatical] settlement examination unless exempt from examination pursuant to KRS 304.15-700(2)(b).

The examination shall be given by the commissioner[executive director] or in accordance with provisions of an agreement the commissioner[executive director] executes with another state.

Section 8. (1) If an applicant who applies to take the examinations required by KRS Chapter 304 does not take an examination or fails to pass an examination within 120 days of the filing of his or her application, the application shall become invalid, unless the executive director grants an extension for good cause shown. The applicant may file a new application at any time following the expiration of the 120 day period, and an examination may be taken when scheduled by the department[office] in the regular course of business.

(2) In determining good cause, the commissioner[executive director] shall consider whether the delay to take the examination or the failure to pass the examination within the time period specified in subsection (1) of this section was due to extenuating circumstances beyond the applicant's control.

Section 9. Examination results are valid for one (1) year from the date the examination is taken. Application for additional lines of authority or licenses issued as a result of the same examination shall be received by the commissioner[executive director] within the same one (1) year period. After this period, the applicant shall be retested.

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

SHARON P. CLARK, Commissioner  
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 29, 2009 at 9 a.m., at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 2009, (5) five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** DJ Wasson, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation restricts the number of times an applicant for an agent's, life settlement broker's, consultant's, or adjuster's license may take the appropriate examination required by the Kentucky Insurance Code or administrative regulations promulgated there under, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

(b) The necessity of this administrative regulation: This administrative regulation prescribes the examination process for licensees of the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(1) provides that examinations required by Subtitle 9 of the Kentucky Insurance Code shall be developed and conducted in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) requires the executive director to promulgate administrative regulations regarding examinations for limited lines of authority. KRS 304.9-320 requires the applicant for a consultant license to pass a written examination. KRS 304.15-720 requires the executive director to promulgate administrative regulations regarding licensing of life settlement providers and brokers. This administrative regulation restricts the number of times an applicant for an agent's, life settlement broker's, consultant's, or adjuster's license may take the appropriate examination required by the Kentucky Insurance Code or administrative regulations promulgated there under, establishes the minimum score for successful completion of a written licensing examination, and establishes the period for which examination scores are valid.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for licensing and examination by specifying the minimum passing score, procedures to retake an examination, the examination required for each line of authority and the length of time in which results are valid.

(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 agency names to conform to EO 2008-507, amends terminology from "viatical" to "life settle-

ment" to conform to 08 RS HB 348, and references the application that must be submitted to schedule an examination.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to legislative changes and the Governor's recent EO and to update references to current forms.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment changes terminology from "viatical" to "life settlement" to conform to 08 RS HB 348.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects future applicants subject to examination.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take comply with this administrative regulation or amendment: The amendments to this administrative regulation are technical amendments and will not impact the current actions of the regulated entities.

(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 incorporates technical changes, there will not be specific cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of the compliance with this regulation, regulated entities will be able to apply to take a licensing examination from the Department of Insurance.

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

(a) Initially: The Department of Insurance does not anticipate any initial cost to implement this administrative regulation.

(b) On a continuing basis: The Department of Insurance does not anticipate any cost on a continuing basis to implement this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees.

(9) TIERING: Is tiering applied? No, tiering does not apply because this administrative regulation is applied in the same manner to all applicants taking an examination for licensure.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720

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

the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Agent Licensing**  
**(Amendment)**

**806 KAR 9:310. Life[Viatical] settlement broker license and notification.**

RELATES TO: KRS 304.15-020, 304.15-700-304.15-725[; 2006 Ky. Acts ch. 54]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.15-700(2)(a), (b), 304.15-720[; 2006 Ky. Acts ch. 54]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-700(2)(a) requires the executive director to promulgate administrative regulations to provide for the licensing of life[viatical] settlement brokers and the termination or revocation of the license. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720 and to establish appropriate requirements and fees for a life[viatical] settlement broker license and for notifying the executive director that an individual licensed as a life insurance agent is acting as a life[viatical] settlement broker. This administrative regulation establishes the information to be included in the application for, the requirements for the issuance and continuation of, and the fees for a viatical settlement broker license and notification.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Insurance. "Executive director" is defined in KRS 304.1-050(1).]

(2) "Department" means the Department of Insurance. "Office" is defined in KRS 304.1-050(2).]

(3) "Life[Viatical] settlement broker" is defined in KRS 304.15-020(8).

Section 2. Individual Applicant. (1) An individual may be issued a life[viatical] settlement broker license if the commissioner[executive director] determines that the applicant:

(a) Is at least twenty-one (21) years of age;

(b) Has completed a forty (40) hour life settlement[viatical] precursing course of study, which has been approved by the executive director in accordance with 806 KAR 9:001;

(c) Has passed a life settlement[viatical] examination in accordance with 806 KAR 9:070;

(d) Submits:

1. Electronically, a completed Individual Uniform Application

prescribed by the National Association of Insurance Commissioners and available on the National Insurance Producer Registry's Web site: www.NIPR.com[www.licenseregistry.com]; or

2. Form 8301, incorporated by reference in 806 KAR 9:340;

(e) Submits Form 8301-BGC, incorporated by reference in 806 KAR 9:340;

(f) Remits the nonrefundable fee of \$250;

(g) Submits Form CPL-01, incorporated by reference in 806 KAR 9:340;

(h) Provides proof of financial responsibility in the amounts established in KRS 304.15-700(5) and in accordance with 806 KAR 9:210; and

(i) If using an assumed name, provides certified copies of certificates required in accordance with KRS 365.015.

(2) An individual notifying the commissioner[executive director] that he or she is acting as a viatical settlement broker in accordance with KRS 304.15-700(2)(b) shall:

(a) Be exempt from the precursing course of study required by subsection (1)(b) and the examination required by subsection (1)(c) of this section;

(b) Submit electronically, a completed Individual Uniform Notification prescribed by the National Association of Insurance Commissioners and available on the National Insurance Producer Registry's Web site: www.NIPR.com[www.licenseregistry.com];

(c) Remit the nonrefundable fee of \$250;

(d) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(2)(d) and in accordance with 806 KAR 9:210; and

(e) If using an assumed name, provide certified copies of certificates required in accordance with KRS 365.015.

Section 3. Business Entity Applicant. (1) A business entity may be issued a life[viatical] settlement broker license if the commissioner[executive director] determines the applicant has designated only individuals acting for, or authorized to act for, the business entity in accordance with KRS 304.9-133.

(2) A business entity applying for a life[viatical] settlement broker license shall:

(a) Submit:

1. Electronically, a Uniform Business Entity Application prescribed by the National Association of Insurance Commissioners and available on the National Insurance Producer Registry's Web site: www.NIPR.com[www.licenseregistry.com]; or

2. Form 8301 - BE, incorporated by reference in 806 KAR 9:340;

(b) Remit the nonrefundable fee of \$750;

(c) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(5) and in accordance with 806 KAR 9:210; and

(d) Provide the following documentation, as applicable:

1. ~~[Articles of incorporation, articles of organization, partnership agreement, or]~~ Certificate of authority from the Kentucky Secretary of State;

2. Documentation supporting the applicant's answers on the application; and

3. If using an assumed name, certified copies of certificates required in accordance with KRS 365.015.

Section 4. Renewal and Continuation of License. (1) Each life[viatical] settlement broker license shall continue in force and renew in accordance with KRS 304.9-260. The renewal fee shall be nonrefundable and in the amount as follows:

(a) \$250 for an individual licensee; or

(b) \$750 for a business entity licensee.

(2) A licensed life[viatical] settlement broker and an insurance agent authorized to operate as a life[viatical] settlement broker in accordance with KRS 304.15-700(2)(b) and Section 2(2) of this administrative regulation shall notify the Department[Office] of Insurance in writing within thirty (30) days of any change to the information in the application, notification, or in the documents required to be submitted in accordance with Section 2 or 3 of this administrative regulation.

Section 5. Continuing Education. (1) An individual licensed as

a life[viatical] settlement broker and an insurance agent authorized to operate as a life[viatical] settlement broker in accordance with KRS 304.15-700(2)(b) and Section 2(2) of this administrative regulation shall complete twenty-four (24) hours of office-approved continuing education in accordance with KRS 304.9-295.

(2) The required continuing education hours shall include a minimum of:

- (a) Three (3) hours in life insurance;
- (b) Three (3) hours in life settlements[viaticals]; and
- (c) Three (3) hours in ethics.

(3) The same hours may be credited towards the individual's continuing education requirements for the life[viatical] settlement broker license and the applicable agent license, if any.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2009 at 9 a.m., at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 2009 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the information to be included in the application for life settlement broker licenses; the requirements for prelicensing education, application procedures, examination, examination fees, and exemption from examination, continuing education, renewal and continuation of license, and notification requirements for individuals and business entities.

(b) The necessity of this administrative regulation: This administrative regulation provides specific prelicensing education, licensing procedures, renewal procedures, and continuing education requirements to flesh out the general provisions in the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-700(3) authorizes the executive director to promulgate administrative regulations to provide for licensing for life settlement providers and brokers, and to prescribe examinations. KRS 304.15-720 authorizes the executive director to promulgate regulations implementing KRS 304.15-700 to 304.15-720.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for licensing of life settlement brokers and providers by specifying the application forms, fees, recordkeeping, prelicensing education, prelicensing course of study, prelicensing examination, continuing education, and to incorporate the current versions of the state applications.

(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 amendment changes "office" to "department" and "executive director" to "commissioner" to conform to EO 2008-507. It also changes terminology from "viatical" to "life settlement" to conform to 08 RS HB 348 and updates Web site addresses.

(b) The necessity of the amendment to this administrative regulation: The amendment provides consistency between the statutes and this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides consistency in terminology between the statutes and the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing consistency in terminology between the statutes and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately seventy-seven (77) life settlement brokers currently licensed in Kentucky and future applicants for a life settlement broker license.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take comply with this administrative regulation or amendment: The amendments to this administrative regulation are technical amendments and will not impact the current actions of the regulated entities.

(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 incorporates technical changes, there will not be specific cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of the compliance with this regulation, regulated entities will be able to apply to take a licensing examination from the Department of Insurance.

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation established fees when originally enacted. This amendment does not alter the existing fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation is applied in the same manner to all life settlement broker applicants.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.15-700(2)(a), (b), 304.15-720

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Agent Licensing  
(Amendment)**

**806 KAR 9:320. Life[Viatical] settlement provider license.**

RELATES TO: KRS 304.15-020, 304.15-700-304.15-725

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507,

signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720 and to establish appropriate requirements and fees for a life[viatical] settlement provider license. This administrative regulation establishes the information to be included in the application for, the requirements for the issuance and continuation of, and the fees for a viatical settlement provider license.

Section 1. Definitions (1) "Commissioner" means the Commissioner of the Department of Insurance." "Executive director" means the Executive Director of the Office of Insurance."

(2) Life "Office" means the Office of Insurance.

(3) "Viatical" settlement provider" is defined in KRS 304.15-020(10).

Section 2. Individual Applicant. (1) An individual may be issued a life[viatical] settlement provider license if the commissioner or executive director determines that the applicant is at least twenty-one (21) years of age.

(2) An individual applying for a life[viatical] settlement provider license shall:

(a) Submit completed Form 8301 and 8301-BGC, incorporated by reference in 806 KAR 9:430;

(b) Remit the nonrefundable fee of \$500;

(c) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(5) and in accordance with 806 KAR 9:210; and

(d) Provide the following documentation, as applicable:

1. Documentation supporting the applicant's answers on the application; and

2. If using an assumed name, certified copies of certificates required in accordance with KRS 365.015.

Section 3. Business Entity Applicant. (1) A business entity may

be issued a life[viatical] settlement provider license if the executive director determines the applicant has designated only individuals acting for, or authorized to act for, the business entity in accordance with KRS 304.9-133.

(2) A business entity applying for a life[viatical] settlement provider license shall:

(a) Submit completed Form 8301-BE;

(b) Remit the nonrefundable fee of \$1,500;

(c) Provide proof of financial responsibility in the amounts established in KRS 304.15-700(5) and in accordance with 806 KAR 9:210;

(d) Provide the following documentation, as applicable:

1. ~~[Articles of incorporation, articles of organization; and partnership agreement, or]~~ Certificate of authority from the Kentucky Secretary of State;

2. Documentation supporting the applicant's answers on the application; and

3. If using an assumed name, certified copies of certificates required in accordance with KRS 365.015;

(e) Provide a list of all officers, directors, or general partners, as applicable, including their names, titles, addresses, Social Security numbers, and Kentucky Department[Office] of Insurance identification numbers; and

(f) Submit Form 8305, incorporated by reference in 806 KAR 9:340.

Section 4. Renewal and Continuation of License. (1) Each life[viatical] settlement provider license shall continue in force and renew in accordance with KRS 304.9-260.

(2) The renewal fee shall be nonrefundable and in the amount as follows:

(a) \$500 for an individual licensee; or

(b) \$1,500 for a business entity licensee.

(3) The licensed life[viatical] settlement provider shall notify the Department [office] of Insurance in writing within thirty (30) days of change to the information in the application or in the documents required to be submitted in accordance with Section 2 or 3 of this administrative regulation.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2009 at 9 a.m., at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 2009 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the information to be included in the application for life settlement provider licenses; application procedures, examination, examination fees, renewal and continuation of license, and notification requirements for individuals and business entities.

(b) The necessity of this administrative regulation: This administrative regulation provides specific licensing procedures, renewal procedures, and notice provisions to clarify the general provisions in the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-720 authorizes the executive director to promulgate regulations implementing KRS 304.15-700 to 304.15-720.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory provisions for licensing of life settlement providers by specifying the application forms, fees, and renewal procedures.

(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 "executive director" to "commissioner" to conform to Executive Order 2008-507. It also changes terminology from "viatical" to "life settlement" to conform to 08 RS HB 348.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide consistency between the statutes and this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides consistency in terminology between the statutes and the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing consistency in terminology between the statutes and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately thirty-six (36) life settlement provider currently licensed in Kentucky and future applicants for a life settlement provider license.

(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 comply with this administrative regulation or amendment: The amendments to this administrative regulation are technical amendments and will not impact the current actions of the regulated entities.

(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 incorporates technical changes, there will not be specific cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of the compliance with this regulation, regulated entities will be able to apply to take a licensing examination from the Department of Insurance.

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

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation established fees when originally enacted.

This amendment does not alter the existing fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation is applied in the same manner to all life settlement provider applicants.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.15-700(2)(a), (b), 304.15-720.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

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

#### PUBLIC PROTECTION CABINET Department of Insurance Life Division (Amendment)

#### 806 KAR 15:050. Reporting and general requirements for [viatical] settlement providers and brokers.

RELATES TO: KRS 304.12-020, 304.14-120, 304.14-450, 304.14-450, 304.15-020, 304.15-035, 304.15-700-304.15-725, 304.99-020

STATUTORY AUTHORITY: KRS 304.15-715(2), 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a commissioner. KRS 304.15-715 requires a request for verification of coverage to be made on a form approved by the executive director. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720. This administrative regulation establishes the standards for life[viatical] settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to life[viatical] settlement contracts, life[viatical] settlement providers, and life[viatical] settlement brokers.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Insurance["Executive director" is defined in KRS 304.1-050(1)].

(2) "Department" means the Department of Insurance.

(3) "Individual identification data" means an insured's address,



telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Security number, or other information that is likely to lead to the identification of the insured.

(4)(3) "Insured" means the person covered under the policy being considered for settlement[viatication].

(5)(4) "Insurer" is defined in KRS 304.1-040[means the entity or insurance company issuing the life insurance policy of the insured].

(6)(5) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be settled[viaticated] can be expected to live as utilized by the life[viatical] settlement provider pursuant to the life[viatical] settlement contract considering medical records and appropriate experiential data.

(7)(6) "Net death benefit" means the amount of the life insurance policy or certificate to be settled[viaticated] less any outstanding debts or liens.

(8) "Owner" is defined in KRS 304.15-020(19).

(7) "Office" is defined in KRS 304.1-050(2).]

Section 2. ~~[Viatical Settlement Contract and Form Approval. (1) A viatical settlement contract submitted to the executive director for approval shall:~~

~~(a) Provide space for identifying the parties;~~

~~(b) Provide space for including the amount of the proceeds payable to the viator; and~~

~~(c) Provide that the contract is to be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party.~~

~~(2) Each viatical settlement contract or other form submitted for approval shall:~~

~~(a) Be accompanied by the filing fee prescribed by 806 KAR 4:010;~~

~~(b) Have a form number in the lower left corner;~~

~~(c) Meet the readability standards established by KRS 304.14-440; and~~

~~(d) Meet the legibility standards established by KRS 304.14-450, except the disclosures required by KRS 304.15-710 shall be in at least twelve (12) point type.~~

~~(3) The executive director may review any previously approved viatical settlement contract or other form for compliance with KRS 304.15-700 to 304.15-725 and this administrative regulation.~~

~~(4) An order of the executive director disapproving a viatical settlement contract or other form shall state the grounds for disapproval.~~

~~(5) An order of the executive director withdrawing approval of a form, other than a viatical settlement contract, shall state the grounds for withdrawal. The withdrawal of a previously approved form, other than a viatical settlement contract, shall be effective at the expiration of a period at least thirty (30) days after the order is entered as the executive director shall prescribe in the order.~~

Section 3-] General Rules. (1) A life[viatical] settlement provider shall not unfairly discriminate in making life[viatical] settlements on the basis of race, age, sex, national origin, creed, religion, occupation, or marital or family status.

(2) A life[viatical] settlement provider shall not unfairly discriminate between an owner[a viator] with a dependent and a an own-er[viator] with no dependent.

(3) A life[viatical] settlement provider shall not solicit investors who may influence the treatment of the illness of the insured whose coverage would be the subject of the investment.

(4) Within three (3) days of execution of the life[viatical] settlement contract, the life[viatical] settlement provider shall mail to the owner[viator] copies of the following:

(a) The executed life[viatical] settlement contract;

(b) The application for the life[viatical] settlement contract; and

(c) The statement from the licensed attending physician that the owner[viator] is of sound mind and not under undue influence or constraint.

(5) Payment of the proceeds of a life[viatical] settlement pursuant to KRS 304.15-710 (1)(g) shall be by means of wire transfer to

an account designated by the owner[viator] or by certified check or cashier's check.

(6) Payment of the proceeds to the owner[viator] pursuant to a life[viatical] settlement shall be made in a lump sum, except [if] the life[viatical] settlement provider may purchase[has purchased] an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. The life[viatical] settlement provider or escrow agent shall not retain a portion of the proceeds not disclosed or described in the life[viatical] settlement contract without written consent of the owner[viator].

(7) A life[viatical] settlement provider or life[viatical] settlement broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any insured's physician, or to an attorney, accountant, or other person providing medical, legal, or financial planning services to the owner[viator], or to any other person acting as an agent of the owner[viator], other than a life[viatical] settlement broker, with respect to the life[viatical] settlement.

(8) If a life[viatical] settlement provider enters into a life[viatical] settlement that allows the owner[viator] to retain an interest in the insurance policy, the life[viatical] settlement contract shall contain the following provisions:

(a) A provision that the life[viatical] settlement provider will affect[effect] the transfer of the amount of the death benefit only to the extent or portion of the amount settled[viaticated]. Benefits in excess of the amount settled[viaticated] shall be paid directly to the owner's[viator's] beneficiary by the insurance company;

(b) A provision that the life[viatical] settlement provider shall, upon acknowledgment of the completion[perfection] of the transfer, either:

1. Advise the owner[insured], in writing, that the insurance company has confirmed the owner's[viator's] interest in the policy; or

2. Send, to the owner[insured], a copy of the instrument sent from the insurance company to the life[viatical] settlement provider that acknowledges the owner's[viator's] interest in the policy; and

(c) A provision that apportions the premiums to be paid by the life[viatical] settlement provider and the owner[viator], [if the contract] provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.

(9) If the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements KRS 304.15-700 through KRS 304.15-720 and this administrative regulation.

Section 3. Life Settlement Contract and Form Approval. (1) A life settlement form submitted to the commissioner for approval shall:

(a) Be filed in accordance with KRS 304.14-120;

(b) Provide space for identifying the parties;

(c) Provide space for including the amount of the proceeds payable to the owner; and

(d) Provide that the contract is to be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party.

(2) Each life settlement contract or other form submitted for approval shall:

(a) Be accompanied by the filing fee prescribed by 806 KAR 4:010;

(b) Have a form number in the lower left corner;

(c) Meet the readability standards established by KRS 304.14-440; and

(d) Meet the legibility standards established by KRS 304.14-450, except the disclosures required by KRS 304.15-710 shall be in at least twelve (12) point type.

(3) The commissioner may review any previously approved life settlement contract or other form for compliance with KRS 304.15-700 to 304.15-725 and this administrative regulation.

Section 4. Filing Requirements for Advertising of Life Settlements. (1) This section shall apply to advertising of life settlement contracts, or related products or services intended for dissemination in Kentucky, including Internet advertising viewed by persons located in Kentucky.

(2) A life settlement licensee shall establish and maintain a system of control over the content, form, and method of dissemination of advertisements of its contracts, products, and services. A system of control shall include routine notification, at least once a year, to persons authorized by the life settlement licensee to disseminate advertisements, of the requirements and procedures for review by the department prior to the use of any advertisements not furnished by the life settlement licensee.

(3) A life settlement licensee shall provide a copy of any advertising for life settlements intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with KRS 304.12-020.

(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(6) The following rules shall govern the advertisement of life settlements:

(a) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving owners, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. It shall not be a remedy of misleading statements to make the life settlement contract available for inspection prior to completion of the sale, or offering to refund the payment if the owner is not satisfied, or including in the life settlement contract a "free look" period that satisfies or exceeds legal requirements.

(b) An advertisement shall not use the name or title of a life insurer or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or a service, may state that a charge is included in the payment, or may use other similar language.

(e) When a testimonial, appraisal, or analysis is used in an advertisement, the testimonial, appraisal, or analysis shall:

1. Be genuine;
2. Represent the current opinion of the author;
3. Be applicable to the life settlement contract product or service advertised;

4. Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonial, appraisal, analysis, or endorsement;

5. Prominently disclose in the advertisement if the individual making the testimonial, appraisal, analysis, or endorsement has a financial interest in the life settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit other than required union scale wages; and

6. Not state or imply that a life settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(f) In using testimonials, appraisals, or analysis, the life settlement licensee makes as its own all the statements contained there-

in, and the statements are subject to all the provisions of this section.

(g) If an endorsement refers to benefits received under a life settlement contract, all pertinent information shall be retained for a period of not less than five (5) years following creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

(h) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(i) An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, insurance producers, policies, services, or methods of marketing.

(j) The name of the life settlement licensee shall be identified in all advertisements about the licensee or its life settlement contracts, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

(k) An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device, or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.

(l) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners into believing that the solicitation is in some manner connected with a government program or agency.

(m) An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's Web site or contact the department to find out if Kentucky requires licensing and, if so, whether the life settlement provider or life settlement broker is licensed.

(n) An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by a government entity.

(o) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, group designation, name of an affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have responsibility for the financial obligation of the licensee.

(p) An advertisement shall not create the impression that a division or agency of the state or of the U. S. government endorses, approves or favors:

1. A life settlement licensee or its business practices or methods of operation;
2. The merits, desirability, or advisability of a life settlement contract;
3. A life settlement contract; or
4. A life insurance policy or life insurer.

(q) If the advertiser emphasizes the speed with which the settlement will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

(r) If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase

price as a percent of face value obtained by owners contracting with the licensee during the past six (6) months.

Section 5. Standards for Evaluation of Reasonable Payments for Terminally or Chronically-Ill Insureds. In order to ensure that owners receive a reasonable return for settling an insurance policy, the return for settling a policy shall be no less than the following payouts for insureds that are terminally or chronically ill:

(1) If an insured's life expectancy is less than six (6) months, eighty (80) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(2) If an insured's life expectancy is at least six (6) months, but less than twelve (12) months, seventy (70) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(3) If an insured's life expectancy is at least twelve (12) months, but less than eighteen (18) months, sixty-five (65) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(4) If an insured's life expectancy is at least eighteen (18) months but less than twenty-five (25) months, sixty (60) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner; and

(5) If an insured's life expectancy is twenty-five (25) months or more, the owner shall receive at least the greater of the cash surrender value or accelerated death benefit in the policy.~~[4. Standards for Evaluation of Reasonable Payments for Terminally or Chronically-Ill Insureds. In order to ensure that viators receive a reasonable return for viaticating an insurance policy, the return for viaticating a policy shall be no less than the following payouts for insureds who are terminally or chronically ill:~~

~~(1) If an insured's life expectancy is less than six (6) months, eighty (80) percent of the minimum percentage of the face value of the policy, less outstanding loans;~~

~~(2) If an insured's life expectancy is at least six (6) months, but less than twelve (12) months, seventy (70) percent of the face value of the policy, less outstanding loans;~~

~~(3) If an insured's life expectancy is at least twelve (12) months, but less than eighteen (18) months, sixty-five (65) percent of the face value of the policy, less outstanding loans;~~

~~(4) If an insured's life expectancy is at least eighteen (18) months but less than twenty-five (25) months, sixty (60) percent of the face value of the policy, less outstanding loans; and~~

~~(5) If an insured's life expectancy is twenty-five (25) months or more, an amount greater than the cash surrender value or accelerated death benefit in the policy.]~~

Section 6.[5.] Prohibited Practices. (1) Except for a subpoena issued by the commissioner[executive director], if a life[viatical] settlement provider or broker is served with a subpoena compelling the life[viatical] settlement provider or broker to produce records containing individual identification data, the life[viatical] settlement provider or broker shall notify the owner[viator] and the insured within five (5) business days after receiving notice of the subpoena. Notice shall be sufficient if delivered to the last known address of the owner[viator] and the insured.

(2) A life[viatical] settlement broker shall not~~[-without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement,]~~ seek or obtain any compensation from the owner in connection with a life settlement transaction prior to performing any services~~[viator]~~.

Section 7.[6.] Insurance Company Practices. (1) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a life[viatical] settlement provider or a life[viatical] settlement broker within thirty (30) calendar days of the date a request is received, subject to the receipt of the Verification of Coverage for Life Insurance Policies~~[following conditions:~~

~~(a) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request; and~~

~~(b) If the coverage is an individual policy or group insurance coverage with details respecting the certificate holder's coverage~~

~~maintained by the insurer, submission of] Form VOC, which has been completed by the life[viatical] settlement provider or the life[viatical] settlement broker in accordance with the instructions on the form.~~

(2) A life insurance company shall not charge a fee for responding to a request for information from a life[viatical] settlement provider or life[viatical] settlement broker in compliance with this section in excess of any usual and customary charges to policyholders ~~or~~~~[contract holders,]~~ certificate holders ~~or~~~~[or insureds]~~ for similar services.

(3) The life insurance company shall~~[may]~~ send an acknowledgment of receipt of the request for verification of coverage to the policyholder~~[policy owner]~~ or certificate holder ~~[and, if the policy owner or certificate owner is other than the insured, to the insured.]~~ the acknowledgment shall~~[may]~~ contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

(4) A life insurance company shall not require the owner~~[viator or insured]~~ to sign any request for change in a policy or~~[of]~~ a group certificate from a life[viatical] settlement provider that is the owner or assignee of the insured's insurance coverage, unless the owner~~[viator or insured]~~ has ownership, assignment, or irrevocable beneficiary rights under the policy. In that situation, the life[viatical] settlement provider shall provide timely notice to the owner~~[insured]~~ that a settlement transaction on the policy has occurred. Notice~~[Timely notice]~~ shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.

Section 8.[7.] Disclosure. (1) The life[viatical] settlement broker shall provide a copy of the life[viatical] settlement disclosure Form LS 7~~[VS-007]~~ and the "Kentucky Consumer Guide to Understanding Life Settlements~~[Viaticals]~~" to the owner~~[viator]~~ on or before the date that the life[viatical] settlement broker offers or advertises the availability of the owner's~~[viator's]~~ life insurance policy, introduces the owner~~[viator]~~ to a life[viatical] settlement provider, or offers or attempts to negotiate a life[viatical] settlement between an owner~~[a viator]~~ and a life[viatical] settlement provider. ~~[The viatical settlement broker shall deliver the original, executed Form VS-007 to the viatical settlement provider that purchases the life insurance policy on or before the date that the viatical settlement contract is signed by each party to the contract.]~~

(2) If there is no life[viatical] settlement broker involved in the life[viatical] settlement transaction, the life[viatical] settlement provider shall provide the life[viatical] settlement disclosure Form LS 7~~[VS-007]~~ and the "Kentucky Consumer Guide to Understanding Life Settlements~~[Viaticals]~~" to the owner~~[viator]~~ on or before the date that the viatical settlement contract is signed by each party to the contract.

~~[(3) The disclosure form required by subsections (1) and (2) of this section shall be signed and dated by the viator, by an authorized representative of the viatical settlement provider, and by the viatical settlement broker, if any.]~~

Section 8. Advertising for Viatical Settlements. (1) This section shall apply to advertising of viatical settlement contracts, or related products or services intended for dissemination in Kentucky, including Internet advertising viewed by persons located in Kentucky.

(2) A viatical settlement licensee shall establish and maintain a system of control over the content, form, and method of dissemination of advertisements of its contracts, products, and services. Advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensee and the individual who created or presented the advertisement. A system of control shall include routine notification, at least once a year, to persons authorized by the viatical settlement licensee to disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

(3) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the ex-

ecutive director from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(4) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(5) The following rules shall govern the advertisement of viatical settlements:

(a) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. Making the viatical settlement contract available for inspection prior to consummation of the sale, or offering to refund the payment if the viator is not satisfied, or including in the viatical settlement contract a "free look" period that satisfies or exceeds legal requirements, shall not remedy misleading statements.

(b) An advertisement shall not use the name or title of a life insurer or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or a service, may state that a charge is included in the payment, or may use other similar language.

(e) When a testimonial, appraisal, or analysis is used in an advertisement, the testimonial, appraisal, or analysis shall:

1. Be genuine;
2. Represent the current opinion of the author;
3. Be applicable to the viatical settlement contract product or service advertised;
4. Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonial, appraisal, analysis or endorsement;
5. Prominently disclose in the advertisement if the individual making the testimonial, appraisal, analysis, or endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit other than required union scale wages; and
6. Not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(f) In using testimonials, appraisals, or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(g) If an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period not less than five (5) years after its use.

(h) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(i) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, insurance producers, policies, services, or methods of marketing.

(j) The name of the viatical settlement licensee shall be identified in all advertisements about the licensee or its viatical settlement contracts, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate

description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(k) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device, or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.

(l) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(m) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the Office of Insurance to find out if Kentucky requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

(n) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by a government entity.

(o) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, group designation, name of an affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have responsibility for the financial obligation of the licensee.

(p) An advertisement shall not create the impression that a division or agency of the state or of the U. S. government endorses, approves or favors:

1. A viatical settlement licensee or its business practices or methods of operation;
2. The merits, desirability, or advisability of a viatical settlement contract;
3. A viatical settlement contract; or
4. A life insurance policy or life insurer.

(q) If the advertiser emphasizes the speed with which the viatical will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(r) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six (6) months.]

Section 9. Reporting Requirement. (1) On or before March 1 of each calendar year, the licensed life[viatical] settlement provider shall submit the following [related to the licensee's activities for the previous calendar year]:

(a) A report of the life[viatical] settlement transactions related to Kentucky insureds, which shall be submitted on Form LS 1[VS 001];

(b) A report of the individual mortality of Kentucky insureds, which shall be submitted on Form LS 2[VS 002];

(c) A report of the life[viatical] settlement transactions in all states and territories, which shall be submitted on Form LS 3[VS 003]; and

(d) A certification of the information contained in the reports, which shall be submitted on Form LS 6[VS 006] and shall be filed

with the reports.

(2) The information reported pursuant to subsection (1) of this section shall include the total number of policies for the previous calendar year that were:

(a) Reviewed for consideration by a life settlement provider;  
(b) Offered for purchase to an owner of a life insurance policy; and  
(c) Purchased by an owner of a life insurance policy. ~~(On or before March 1 of each calendar year, the licensed viatical settlement broker shall submit the following related to the licensee's activities for the previous calendar year:~~

~~(a) A report of the viatical settlement transactions related to Kentucky insureds, which shall be submitted on Form VS-004;~~

~~(b) A report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VS-005; and~~

~~(c) A certification of the information contained in the reports, which shall be submitted on Form VS-006 and shall be filed with the reports.]~~

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Consumer Guide to Understanding Life Settlements[Viaticals]" (7/2008[5/2005] edition);

(b) Form LS 1[VS-004], "Life[Viatical] Settlement Provider Report - Kentucky Insureds Only" (7/2008[4/2004] edition);

(c) Form LS 2[VS-002], "Individual Mortality Report - Kentucky Insureds Only" (7/2008[4/2004] edition);

(d) Form LS 3[VS-003], "Life[Viatical] Settlement Provider Report - All States and Territories" (7/2008[4/2004] edition);

~~(e) Form VS-004, "Viatical Settlement Broker Report - Kentucky Insureds Only" (4/2004 edition);~~

~~(f) Form VS-005, "Viatical Settlement Broker Report - All States and Territories" (4/2004 edition);]~~

~~(e) [(g)] Form LS 6[VS-006], "Life[Viatical] Settlement Provider [Broker] Certification Form" (7/2008[6/2005] edition); and~~

~~(f) [(h)] Form LS 7[VS-007], "The Kentucky Life[Viatical] Settlement Disclosure Form - Notice Regarding Life[Viatical] Settlement Contracts" (7/2008[6/2005] edition); and~~

~~(g) [(i)] Form VOC, "Verification of Coverage for Life Insurance Policies Form" (7/2008[4/2005] edition).~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[Office] of Insurance, 215 West Main Street, Post Office Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained on the Department[Office] of Insurance Internet Web site at <http://doi.ppr.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2009 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the standards for life settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to life settlement contracts, life settlement providers and life settlement brokers.

(b) The necessity of this administrative regulation: This regulation is necessary to provide additional clarification of the life settlement statutes and to prescribe the processes for doing business as a life settlement broker and a life settlement provider.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement the life settlement statutes. KRS 304.15-715 authorizes the executive director to establish a form for life settlement providers to use to request verification of coverage. This regulation aids in the implementation of the life settlement statutes and prescribes the required form to request verification of coverage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes the process for approval of forms for use in life settlement transactions, clarifies prohibited practices in life settlement transactions, establishes minimum amounts to be paid to a chronically or terminally ill owner, prescribes required disclosures, sets standards for advertising life settlement services and establishes a reporting mechanism to allow the Department of Insurance to appropriately monitor the industry.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative language change terminology throughout the regulation to conform to 08 RS HB 348; change agency names to conform to Executive Order 2008-507; restructure the order of the sections within the administrative regulation to a more logical sequence; change the standard for the filing of advertisements from a "prior approval" standard to a "review" standard to conform to the standard utilized for long-term care insurance and other insurance products; clarify that any reduction in the amount of a return for settling a life insurance policy for a terminally or chronically ill insured is based on the outstanding loan received by the owner; remove the ability of a life settlement broker or provider from seeking or obtaining compensation before services are performed if he or she receives written permission from the owner; and removes the reporting requirements for life settlement brokers.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to provide consistency with the life settlement statutes, as amended by 08 RS HB 348; to conform to Executive Order 2008-507; and to provide clarity to the requirements in the existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement the life settlement statutes. KRS 304.15-715 authorizes the executive director to establish a form for life settlement providers to use to request verification of coverage. The amendments to this administrative regulation provide necessary changes to implement the life settlement statutes as amended by 08 RS HB 348.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will provide consistency with the provisions of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance and the approximately 113 licensed life settlement brokers and life settlement providers in the Commonwealth of Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative

regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Most of the amendments to this administrative regulation are formatting and terminology changes that will not require any new action on behalf of the regulated entities. Life settlement providers will be required to utilize the new forms for their annual reports. Life settlement brokers will no longer be required to report on an annual basis. Advertising utilized by life settlement providers and life settlement brokers will no longer be filed for prior approval. Rather, advertisements will be filed for review by the Department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because most of the changes relate to formatting and terminology changes, there should not be an additional cost to regulated entities in order to comply with the amendments to this administrative regulation. Because the reporting requirement for life settlement brokers was removed, there should be a reduced administrative cost for life settlement brokers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, regulated entities will be in compliance with the life settlement law in Kentucky and, therefore, not subject to administrative action by the Department. Policyholders seeking to settle life insurance policies can be assured that they are receiving the proper disclosures to make an informed decision.

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

(a) Initially: There should not be a cost to implement the amendments to this administrative regulation. Because the amendments remove the requirement for life settlement brokers to report, there may be a slight reduction in administrative time and costs for the Department.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and all life settlement brokers and life settlement providers licensed in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.15-715(2), 304.15-720

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

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

fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Building Code Enforcement (Amendment)

#### 815 KAR 25:080. Requirements for certified installer seals and certification of[certifying] manufactured home installers.

RELATES TO: KRS 227.550, 227.560(1), 227.570, 227.580(1), (3), 227.590, 227.600(3), 227.630, 227.990

STATUTORY AUTHORITY: KRS 227.570(2), 227.590(1), 227.570(4), EO 2008-507.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.570(2) requires the office to enforce standards of installation, adopted by the Manufactured Home Certification and Licensure Board, as it determines are reasonably necessary to protect public health and safety. KRS 227.590(1) requires the board to promulgate administrative regulations to establish the standards. KRS 227.570(4) requires the board to promulgate administrative regulations to establish standards for the certified installer seal program. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the requirements for certified installer seals and certification of[certifying] manufactured home installers.

Section 1. Definitions. (1) "Board" is defined in KRS 227.550(1).

(2) "Certified installer" means an individual certified to install manufactured homes in Kentucky pursuant to this administrative regulation.

(3) "Certified installer seal" means a seal indicating that a manufactured or mobile home has been installed by a person properly licensed as a certified installer pursuant to this administrative regulation.

(4)[(3)] "Installation" means the work performed on-site and the operations involved in the delivery, permanent securing, and placement of a manufactured home for the purpose of human occupancy, to:

(a) Include the following:

1. Preparation of a permanent foundation;
2. Placement of polyvinyl covering on the ground, if applicable;
3. The placement and connection of utilities performed by appropriately-licensed contractors;
4. Anchoring and tying down; and
5. Installation of other accessory or appurtenance specified in the sales contract; and

(b) Exclude the following:

1. Site preparation; or
2. For a single-section home, ground set after site preparation.

(4)[ "Office" is defined in KRS 227.550(14).

(5)] "Permanent foundation" means a system of supports:

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- (a) Capable of transferring without failure, into soil or bedrock, the maximum design load imposed by or upon the structure;
- (b) Constructed of concrete; and
- (c) Placed at a depth below grade adequate to prevent frost damage.

(5)(f) "Site preparation" means work performed on the land in preparation for installation of the home:

- (a) Including:
  - 1. Clearing and initial grading;
  - 2. Water drainage; and
  - 3. Vegetation control; and
- (b) Excluding final grading after the home has been set.

Section 2. Requirements for Certification. (1) An applicant for certified installer shall:

- (a) Submit to the department[office] a completed Form MHCI 3;
- (b) Pay an application fee of \$100 to the department[office];
- (c) Successfully complete fifteen (15) hours of an approved course of education;
- (d) Provide written proof of regularly assisting in site preparation and installation functions:
  - 1. Under the supervision of a certified installer;
  - 2. For at least sixty (60) days; and
  - 3. On at least five (5) homes;
- (e) Pass the certified installer examination given by the department[office]; and
- (f) Provide a certificate verifying current worker's compensation insurance coverage, if the applicant is employed at the time of application.

(2) An installer certification shall be issued in the name of the individual qualified under subsection (1) of this section. The individual may request that the certificate also bear the name of the employing company.

(3) If the certified installer changes his business name or is no longer associated with the company whose name appears upon the certificate, the certified installer shall inform the office and request an amended certificate which shall reflect the current status. If the certified installer is no longer associated with a company, that company shall not hold itself out as a certified installer or having in its employ a certified installer until another certified person has become associated with that company.

Section 3. Renewal of Certification; Continuing Education. (1) The installer certificate shall expire on the last day of the installer's birth month. If an initial certificate is for a period of less than twelve (12) months, the fee shall be reduced on a pro rata monthly basis.

(2) A certified installer seeking to renew certification shall:

- (a) Submit a completed application, Form DHBCMH 40-21[MHCI-3], to the department[office];
- (b) Pay a renewal fee of fifty (50) dollars; and
- (c) Provide proof of at least five (5) classroom hours successfully completed during the year in a course offered by the Kentucky Manufactured Housing Institute.

Section 4. Minimum Requirements for Installations. A certified installer shall comply with KRS 227.570(3) by using the manufacturer's instructions or ANSI A225.1, Manufactured Home Installations.

Section 5. Certified Installer Seal. (1) A certified installer who installs a manufactured or mobile home in accordance with the standards set forth in this regulation shall place a certified installer seal on the home. Certified installer seals shall be obtained from the department. The application shall be:

- (a) Filed on Form DHBC MHCI 4; and
- (b) Accompanied by a fee of twenty-five (25) dollars for each seal.

(2) Recordkeeping. A certified installer shall:

(a) Maintain the following information, reported monthly to the Division of Building Code Enforcement, Manufactured Housing Section, by regular U.S. Mail, facsimile or electronically, on Form DHBC MH 40-30, for each certified installation:

- 1. Unit serial number;
- 2. Certified installer seal number;

3. Date manufactured, if known;

4. Make of unit;

5. Installation date of unit; and

6. Name of consumer and address where the manufactured home is located.

(b) Retain the completed Form DHBC MH 40-30 for three (3) years; and

(c) Make a copy of the form available to a manufactured housing field inspector upon request.

(3) Application and placement of certified installer seals.

(a) Each certified installer seal consists of two parts which shall be affixed as follows:

1. One part shall be placed two (2) inches above the HUD label on the outside left corner of a manufactured home or on the outside left corner of a mobile home where no HUD label is required; and

2. One part shall be placed on the inside of the electrical panel in the manufactured home.

(b) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the certified installer seal.

(4) Lost or damaged seals.

(a) If a certified installer seal becomes lost or damaged, the owner shall notify the department immediately, in writing, specifying:

1. The manufacturer;

2. The manufactured or mobile home serial number; and

3. The certified installer seal number, if known

(b) A damaged seal shall be:

1. Promptly returned to the department; and

2. Replaced by the office at a cost of twenty-five (25) dollars.

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

(a) "ANSI A225.1, Manufactured Home Installations", 1994 Edition;[and]

(b) "Form MHCI 3, Certified Installer Application", September 2007;[and]

(c) "Form DHBC MH 40-29, Application For Certified Installer Seals", December 2008;

(d) "Form DHBC MH 40-21, Certified Installer Renewal Application", December 2008; and

(e) "Form DHBC MH 40-30, Monthly Certified Installer Certification", December 2008.

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

KREIL MORAN, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 4, 2008

FILED WITH LRC: December 15, 2008 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2009, at 9 a.m., in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 19, 2009 five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Michael D. Bennett, Staff Attorney, Department of Housing, Buildings and Construction, 101 Sea Hero

Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 126, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael D. Bennett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for certifying individuals engaged in the installation of manufactured and mobile homes.

(b) The necessity of this administrative regulation: The Manufactured Home Certification and Licensure Board are required to promulgate regulations to effectuate the provisions of KRS 227.550-KRS 227.660, including the certification of installers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute directs the Board to establish standards for the design, manufacture, installation and sale of new and used manufactured homes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standards for the certification of installers as directed by statute. Applying the rules set forth in this regulation will enable the Department to effectively and efficiently regulate installers and the manufactured housing industry in the interest of the safety of the occupants of manufactured homes and the public.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the certified installer seal program.

(b) The necessity of the amendment to this administrative regulation: The General Assembly passed legislation in the 2008 session requiring certified installer seals. The legislation, codified at KRS 227.570(4), takes effect January 1, 2009, and this amendment is necessary to implement the statute.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.570(4), effective January 1, 2009, authorizes the promulgation of regulations in support of the statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment enables the office to comply with legislation passed by the Kentucky General Assembly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect installers of manufactured homes. Purchasers and owners of manufactured homes will also be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities must comply with installation standards and guidelines as before. In addition, certified installers must leave a certified installer seal indicating the installation was performed by a certified installer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Certified Installer Seals will cost twenty-five dollars (\$25) each.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Owners of manufactured homes will know that their home has been set properly according to the applicable standards and that the installer has received the proper training and education, ensuring peace of mind for the homeowner.

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

(a) Initially: There should be no initial cost to implement this administrative regulation;

(b) On a continuing basis: Continuing costs such as the hiring of additional inspectors will be covered by the cost of the Certified Installer Seals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Manufactured Housing inspectors and employees of the Department of Housing, Buildings and Construction paid through agency funds will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment establishes a fee in the amount of twenty-five dollars (\$25), but no other increase in funding will be necessary to implement the amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amended regulation establishes a fee in the amount of twenty-five dollars (\$25) for each Certified Installer Seal.

(9) TIERING: Is tiering applied? Tiering was not applied as all certified installers are treated equally under this administrative regulation and amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Department of Housing, Buildings and Construction.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 227.570(4) (effective January 1, 2009) requires the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Exact revenues cannot be ascertained at this time, but the regulation will be fiscally neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Exact revenues cannot be ascertained at this time, but the regulation will be fiscally neutral.

(c) How much will it cost to administer this program for the first year? Exact costs cannot be ascertained at this time, but the regulation will be fiscally neutral.

(d) How much will it cost to administer this program for subsequent years? Exact costs cannot be ascertained at this time, but the regulation will be fiscally neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will be fiscally neutral.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Community Alternatives**  
**(Amendment)**

**907 KAR 1:170. Reimbursement for home and community based waiver services.**

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)



## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

**NECESSITY, FUNCTION, AND CONFORMITY:** The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by home and community based waiver service providers to an eligible recipient as an alternative to nursing facility care.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066, Section 4; and

(b) Certified for Medicaid participation by the department.

(3) "Cost report" means the Home Health and Home and Community Based Cost Report and the Home Health and Home and Community Based Cost Report Instructions.

(4) "DD" means developmentally disabled.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Fixed upper limit" means the maximum amount the department shall reimburse for a unit of service.

(7) "HCB" means home and community based waiver.

(8) "HCB recipient" means an individual who:

(a) Meets the criteria for a recipient as defined in KRS 205.8451; and

(b) Meets the criteria for HCB services as established in 907 KAR 1:160.

(9) "Level I" means a reimbursement rate paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient.

(10) "Level II" means a reimbursement rate of paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient, if the ADHC center meets the criteria established in Sections 5 and 6 of this administrative regulation.

(11) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(12) "Metropolitan Statistical Area" means the designation of an urban population center based on the national census and updated on a yearly basis as published by the United States Office of Management and Budget.

(13) "Nonprofit organization" means a legally constituted organization under the Internal Revenue Service code whose objective is to support or engage in activities of public or private interest without any commercial or monetary profit.

(14) "Occupational therapist" is defined by KRS 319A.010(3).

(15) [(43)] "Occupational therapist assistant" is defined by KRS 319A.010(4).

(16) [(44)] "Physical therapist" is defined by KRS 327.010(2).

(17) [(45)] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(18) [(46)] "Quality improvement organization" or QIOs defined in 42 C.F.R. 475.101.

(19) "Revenue code service" means:

(a) An assessment, reassessment, homemaking, personal care, respite, or attendant care service; or

(b) A minor home adaptation.

(20) "Safety net provider" means a provider which:

(a) Provides 100,000 or more units of revenue code services per year;

(b) Provides revenue code services in an area that is not a Metropolitan Statistical Area of the Commonwealth; and

(c) Is a nonprofit organization.

(21) [(47)] "Speech-language pathologist" is defined by KRS 334A.020(3).

Section 2. HCB Service Reimbursement. (1) Except as provided in Section 3, 4, or 5 [3 or 4] of this administrative regulation, the department shall reimburse for a home and community based waiver service provided in accordance with 907 KAR 1:160 at the lesser [lessor] of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits:

Home and Community Based Waiver Service	Fixed Upper Payment Rate Limit	Unit of Service
Assessment	\$100.00	Entire assessment process
Reassessment	\$100.00	Entire reassessment process
Case Management	\$15.00	15 minutes
Homemaking	\$13.00	30 minutes
Personal Care	\$15.00	30 minutes
Attendant Care	\$11.50	1 hour (not to exceed 45 hours per week)
Respite	\$2,000 per 6 months (January 1 through June 30 and July 1 through December 31, not to exceed \$4,000 per calendar year)	1 hour
Minor Home Adaptation	\$500 per calendar year	

(2) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

(3) A homemaking service shall be limited to no more than four (4) units per week per HCB recipient.

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

(a) Pursuant to Section 2 of this administrative regulation; and

(b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall submit a cost report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual cost report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual cost report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's cost report if it determines an audit is necessary.

Section 4. Safety Net Provider Standard Reimbursement. (1) The department shall reimburse for a revenue code service provided by a safety net provider a rate equal to the median rate of all local health departments for the revenue code service.

(2) The median rate referenced in subsection (1) of this section shall be the median rate subsequent to any supplemental payment

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pursuant to Section 3(4) or recoupment pursuant to Section 3(5) of this administrative regulation.

### Section 5. [Section 6.] Reimbursement for an ADHC Service.

#### (1) Reimbursement shall:

##### (a) Be made:

1. Directly to an ADHC center; and
2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 120 units per calendar week at each HCB recipient's initial review or recertification.

(2) Level I reimbursement shall be the lesser of the provider's usual and customary charges or two (2) dollars and fifty-seven (57) cents per unit of service.

(3) Level II reimbursement shall be the lesser of the provider's usual and customary charges or three (3) dollars and twelve (12) cents per unit of service.

(4) The department shall not reimburse an ADHC center for more than twenty-four (24) basic units of service per day per HCB recipient.

##### (5) An ADHC basic daily service shall:

(a) Constitute care for one (1) HCB recipient; and

(b) Not exceed twenty-four (24) units per day.

(6) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(7) An ADHC center may request a Level II reimbursement rate for an HCB recipient if the ADHC center meets the following criteria:

(a) The ADHC center has an average daily census limited to individuals designated as:

1. HCB recipients;
2. Private pay; or
3. Covered by insurance; and

(b) The ADHC center has a minimum of eighty (80) percent of its individuals meeting the requirements for DD as established in Section 5(2) of this administrative regulation.

(8) If an ADHC center does not meet the Level II requirements established in Section 5 of this administrative regulation, the ADHC center shall be reimbursed at a Level I payment rate for the quarter for which the ADHC center requested Level II reimbursement.

(9) To qualify for Level II reimbursement, an ADHC center that was not a Medicaid provider before July 1, 2000 shall:

(a) Have an average daily census of at least twenty (20) individuals who meet the criteria established in subsection (2)(a) of this section; and

(b) Have a minimum of eighty (80) percent of its individuals meet the description of DD as established in Section 5(2) of this administrative regulation.

(10) To qualify for reimbursement as an ancillary therapy, a service shall be:

- (a) Medically necessary;
- (b) Ordered by a physician; and
- (c) Limited to:

1. Physical therapy provided by a physical therapist or physical therapist assistant;

2. Occupational therapy provided by an occupational therapist or occupational therapist assistant; or

3. Speech therapy provided by a speech-language pathologist.

##### (11) Ancillary therapy service reimbursement shall be:

(a) Per HCB recipient per encounter; and

(b) The usual and customary charges not to exceed the Medicaid upper limit of seventy-five (75) dollars per encounter per HCB recipient.

##### (12) A respite service shall:

(a) Be provided on site in an ADHC center; and

(b) Be provided pursuant to 907 KAR 1:160.

(13) One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes.

(14) The length of time an HCB recipient receives a respite service shall be documented.

(15) A covered respite service shall be reimbursed as established in Section 2 of this administrative regulation.

### Section 6.[5.] Criteria for DD ADHC Level II Reimbursement. To qualify for Level II reimbursement:

(1) An ADHC center shall meet the requirements established in Section 4 of this administrative regulation; and

(2) Eighty (80) percent of its ADHC service individuals shall have:

(a) A substantial disability that shall have manifested itself before the individual reaches twenty-two (22) years of age;

(b) A disability that is attributable to mental retardation or a related condition which shall include:

1. Cerebral palsy;
2. Epilepsy;
3. Autism; or
4. A neurological condition that results in impairment of general intellectual functioning or adaptive behavior, such as mental retardation, which significantly limits the individual in two (2) or more of the following skill areas:
  - a. Communication;
  - b. Self-care;
  - c. Home-living;
  - d. Social skills;
  - e. Community use;
  - f. Self direction;
  - g. Health and safety;
  - h. Functional academics;
  - i. Leisure; or
  - j. Work; and

(c) An adaptive behavior limitation similar to that of a person with mental retardation, including:

1. A limitation that directly results from or is significantly influenced by substantial cognitive deficits; and
2. A limitation that is not attributable to only a physical or sensory impairment or mental illness.

Section 7.[6.] The Assessment Process for Level II ADHC Reimbursement. (1) To apply for Level II ADHC reimbursement, an ADHC center shall contact the QIO on the first of the month prior to the end of the current calendar quarter. If the first of the month is on a weekend or holiday, the ADHC center shall contact the QIO the next business day.

(2) The QIO shall be responsible for randomly determining the date each quarter for conducting a Level II assessment of an ADHC center.

(3) In order for an ADHC center to receive Level II reimbursement:

##### (a) An ADHC center shall:

1. Document on a MAP-1021 form that it meets the Level II reimbursement criteria established in Section 5 of this administrative regulation;

2. Submit the completed MAP-1021 form to the QIO via facsimile or mail no later than ten (10) working days prior to the end of the current calendar quarter in order to be approved for Level II reimbursement for the following calendar quarter; and

3. Attach to the MAP-1021 form a completed and signed copy of the "Adult Day Health Care Attending Physician Statement" for each individual listed on the MAP-1021 form;

(b) The QIO shall review the MAP-1021 form submitted by the ADHC center and determine if the ADHC center qualifies for Level II reimbursement; and

(c) The department shall review a sample of the ADHC center's Level II assessments and validate the QIO's determination.

(4) If the department invalidates an ADHC center Level II reimbursement assessment, the department shall:

(a) Reduce the ADHC center's current rate to the Level I rate; and

(b) Recoup any overpayment made to the ADHC center.

(5) If an ADHC center disagrees with an invalidation of a Level II reimbursement determination, the ADHC center may appeal in accordance with 907 KAR 1:671, Sections 8 and 9.

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Section 8.[7-] Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

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

(a) "Map-1021, ADHC Payment Determination Form", August 2000 Edition;

(b) "Adult Day Health Care Attending Physician Statement", August 2000 Edition;

(c) "The Home Health and Home and Community Based Cost Report", November 2007 Edition; and

(d) "The Home Health and Home and Community Based Cost Report Instructions", November 2007 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH JOHNSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 1, 2008

FILED WITH LRC: December 2, 2008 at 4 p.m.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Ked Fitzpatrick (502) 564-8196

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to home and community based (HCB) waiver service reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to home and community based (HCB) waiver service reimbursement.

(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 provisions related to home and community based (HCB) waiver service reimbursement

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to home and community based (HCB) waiver service reimbursement.

(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 establishes a new category of service provider, safety net provider, along with a corresponding enhanced reimbursement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure adequate access to services for rural HCB service recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring adequate access to services for HCB recipients in rural areas.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring adequate access to services for HCB recipients in rural area.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services anticipates that one (1) entity will qualify as a safety net provider.

(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 amendment establishes a new category of service provider, safety net provider, along with a corre-

sponding enhanced reimbursement and does not require provider compliance action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Reimbursement is enhanced for a safety net provider which in turn also ensures access to services for HCB recipients in rural areas.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the amendment will cost approximately \$500,000 (\$350,000 federal funds and \$150,000 state funds) annually.

(b) On a continuing basis: DMS anticipates that the amendment will cost approximately \$500,000 (\$350,000 federal funds and \$150,000 state funds) annually.

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

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

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

(9) Tiering: Is tiering applied? Tiering is applied in that an entity must qualify as a safety net provider to receive the new enhanced reimbursement. A safety net provider's viability is necessary to promote adequate access to HCB services for recipients located in rural areas.

### 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 Medicaid Services anticipates that it, a state government entity, will be impact in that the amendment is projected to cost approximately \$500,000 (\$350,000 federal funds/\$150,000 state funds) annually.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.030(2), 194A.050(1) and 205.520(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.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. DMS does not expect the amendment to generate revenue for state or local government

(c) How much will it cost to administer this program for the first year? DMS anticipates that the amendment will cost approximately \$500,000 (\$350,000 federal funds and \$150,000 state funds) annually.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendment will cost ap-

proximately \$500,000 (\$350,000 federal funds and \$150,000 state funds) annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Expenditures:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Income Support**  
**Child Support Enforcement**  
**(Amendment)**

**921 KAR 1:410. Child support collection and enforcement.**

RELATES TO: KRS 13B.010(2), 67A.620, 95.620(1), 95.878, 161.700(1), 186.570(2), 205.595, 205.710-205.800, 237.110(4), 403.215, 405.060(2), (3), 405.405, 405.430-405.510, 407.5101-407.5701, 427.120, 427.125, 45 C.F.R. 302.60, 302.65, 303.6, 303.32, 303.72, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17), (19), (b)[, Pub.L. 109-174]

STATUTORY AUTHORITY: KRS 15.055(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, 42 U.S.C. 654, 659, 666

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires states to have laws that prescribe procedures to improve effectiveness of child support enforcement. KRS 205.712(2) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support.

Section 1. Collection. (1) Income withholding shall be used for collection of an assigned support obligation or health insurance coverage as defined by 921 KAR 1:001, Section 1(3), (24), and (29).

(2) The cabinet shall notify an employer or other income source of a request for income withholding for an assigned support obligation or health insurance coverage within:

(a) Fifteen (15) calendar days of a request for income withholding by sending the employer or other income source:

1. ["CS-89, Income Withholding for Support"]; and

2. ["CS-72, National Medical Support Notice"]; or

(b) Two (2) working days after entry of an obligor into the State Directory of New Hires.

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date of the CS-89; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) working days after receipt of the notice.

(4) In accordance with KRS 405.467(4), the cabinet shall send an obligor a CS-164, Notice of Income Withholding, and the CS-89 in order to notify the obligor that the income withholding:

(a) May be contested by requesting an administrative hearing pursuant to 921 KAR 1:430; and

(b) Shall apply to the current and any subsequent employer.

(5) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the CS-72.

(6) If an obligor terminates employment, the employer or other income source shall take action pursuant to KRS 405.465(5).

(7) An obligor shall inform the cabinet of any changes in:

1. A current employer or source of income; and

2. Access to health insurance.

(8) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(9) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(10) The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:

(a) An assigned support obligation payment to the state disbursement unit in the child support agency; or

(b) A medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan.

(11) The employer or other income source:

(a) Shall include on the transmittal to the cabinet the obligor's:

1. Name;

2. Social Security number; and

3. Cabinet-assigned identification number; and

(b)1. Shall not be required to change payroll frequency but shall withhold at least once monthly; or

2. May combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by:

a. Name;

b. Social Security number; and

c. Cabinet-assigned identification number.

(12) Withholding of unemployment compensation.

(a) The cabinet, through an agreement with the Education Cabinet, Office of Employment and Training, shall fax a CS-76, Unemployment Insurance Notice of Withholding, to the Department of Unemployment Insurance within the Education Cabinet to collect a child support payment from an obligor receiving unemployment compensation.

(b) The cabinet shall provide a CS-73, Unemployment Insurance Letter, and CS-76, Unemployment Insurance Notice of Withholding to notify an obligor that:

1. Current child support obligation or delinquency is owed;

2. The cabinet has completed a CS-76 to order withholding of:

a. Fifty (50) percent of the unemployment benefit; or

b. The amount of the assigned support obligation, whichever is less; and

3. The obligor may contest the withholding by requesting an administrative hearing as specified in 921 KAR 1:430.

Section 2. Enforcement. (1) Federal income tax refund offset and administrative offset.

(a) A public assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least \$150; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;

2. Cabinet verifies accuracy of the obligor's name and Social Security number;

3. Nonpublic assistance arrearage owed is equal to or greater than \$500, exclusive of fees, court costs, or other non-child support debt; and

4. Cabinet has a copy of the:

a. Current support order; and

b. Payment record

(c)1. If a case is submitted for federal tax refund offset, the case may be subject to federal administrative offset of nonexempt federal payments pursuant to 42 U.S.C. 664 and 45 C.F.R. 303.7.

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(2) State income tax refund offset.

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(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, Kinship Care, or foster care child support shall qualify for offset if:

1. There is an arrearage on a legally-assigned support obligation;

2. The obligor's name and Social Security number are known;

3. The arrearage is verified as accurate; and

4. The amount of the arrearage is at least \$150.

(b) A nonpublic assistance support arrearage shall qualify for offset if the:

1. Case meets the criteria specified in subsection (1)(b)1, 2, and 4 of this section; and

2. Required arrearage amount is not less than \$150.

(3) Tort claim settlements and administrative offset. The cabinet shall:

(a) Identify a child support case for administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (1)(a) or (b) of this section;

(b) Send by mail form CS-122, Advance Notice of Intent to Collect Past-Due Support, to an obligor notifying that the obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430; and

(c) Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection.

(4) Financial Institution Data Match (FIDM). The cabinet shall:

(a) Use the following criteria to identify a case for seizure of assets:

1. The obligor owes an arrearage equal to at least six (6) months obligation or \$1,000, whichever is less; and

2. The obligor is not complying with the most recent assigned support order;

(b) Issue a ["CS-68, Order to Withhold["], and ["CS-69, Answer to Withhold["], to a financial institution holding the obligor's account or accounts;

(c) Issue a CS-68 and CS-121, Noncustodial Parent's Answer to Withhold, to the obligor by certified mail within two (2) working days:

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. After notifying the obligor that the funds in the account with the financial institution may be retained by contesting the order to withhold and requesting an administrative hearing in accordance with 921 KAR 1:430;

(d) Refer the case for parent-locator service, if a CS-68 is returned and the forwarding address for the obligor is unknown;

(e) Send to the financial institution a ["CS-83, Order to Deliver["] if:

1. There is no dispute; or

2. The obligor does not take an action specified in paragraph (g) of this subsection;

(f) Send within twenty (20) calendar days of an administrative hearing decision, a:

1. CS-83 to the financial institution, if a case qualifies for the withhold and deliver process; or

2. ["CS-70, Release of Order to Withhold["] to the financial institution and an obligor, if a case does not qualify for the withhold and deliver process; and

(g) Notify an obligor that to retain the funds in the account with the financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar days from the date of receipt of a CS-68

1. Pay the total arrearage;

2. Post a bond for the total arrearage; or

3. Sign a CS-78, Payment Agreement, to pay within fifteen (15) calendar days:

a. Current support;

b. A \$1000 lump sum payment which may be negotiated if the amount:

(i) Places an unjust burden on the obligor; or

(ii) Prevents the obligor from obtaining or retaining employment;

c. A negotiated percentage of the remaining arrearage balance which shall be agreed upon by the obligor and the cabinet; and

d. An arrearage payment for subsequent months as determined by one (1) of the following:

(i) An amount established by a court order;

(ii) If there is not a court order for arrearage judgment, the payment shall be twenty-five (25) percent of the court-ordered current support obligation; or

(iii) If current support is not owed, the minimum payment shall be equal to the most recent court-ordered support obligation.

(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a FIDM, pursuant to 42 U.S.C. 666(a)(17), the cabinet shall comply with KRS 205.712, 407.5305, and 407.5507 to issue:

(a) A CS-68 and a CS-69 to a financial institution holding the obligor's account or accounts;

(b) A CS-68 and a ["CS-121.1, Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases["], to the obligor by certified mail within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and

(c) To the financial institution a:

1. CS-83 if there is no dispute; or

2. CS-70 if the initiating state's request is withdrawn.

(6) Lump sum payment.

(a)1. Written notice provided by an employer as required by KRS 405.465(6) shall be sent to the Department for Income Support, Child Support Enforcement [Community-Based Services, Division of Child Support], and shall include the:

a. Name of the employee;

b. Social Security number of the employee;

c. Amount of the lump sum payment; and

d. Intended payment date; and

2. The notice may include multiple employees on one (1) written notification if information in accordance with subparagraph 1 of this paragraph is provided for each employee.

(b) Upon receipt of notification, pursuant to paragraph (a) of this subsection, Child Support Enforcement [the Division of Child Support] shall determine if the:

1. Employee owes an arrearage on an assigned support obligation; and

2. Requirements of KRS 405.465(1) are met.

(c) If the employee owes no arrearage, Child Support Enforcement [the Division of Child Support] or its designee may notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to subparagraph (b) of the subsection, Child Support Enforcement [the Division of Child Support] or its designee shall initiate:

1. A court order to the employer in accordance with KRS 405.465; or

2. An administrative order in accordance with KRS 405.470.

(e) If Child Support Enforcement [the Division of Child Support] or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from the Division of Child Support or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

Section 3. Administrative Enforcement Actions. (1)(a) The cabinet shall file a lien on an obligor's interest in personal or real property, in accordance with KRS 205.745, if:

1. The obligor owes an arrearage equal to or greater than one (1) month's obligation;

2. The obligor's account has been audited and the arrearage confirmed;

3. The property has been identified and located; and

4. The value of the property exceeds the costs related to filing the lien.

(b) To file a lien, the cabinet shall issue a:

1.a. CS-92, Intrastate Notice of Lien, for property within Kentucky, in accordance with KRS 205.745; or

b. CS-85, Notice of Lien, for property outside Kentucky in accordance with KRS 205.7785; and

2. Provide a CS-119, Noncustodial Parent's Notice of Lien, to the obligor notifying that:

a. The obligor may contest the lien as specified in 921 KAR 1:430;

b. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2); and

c. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a CS-120, Release of Lien, shall be provided to the obligor;

(b)1. If the conditions for filing a lien pursuant to paragraph (a) of this subsection are not met, the cabinet shall: Provide a CS-122 to the obligor notifying that:

a. Past-due amounts shall be reported to a certified consumer reporting agency; and

b. The obligor may contest the accuracy of the information by requesting an administrative hearing as specified in 921 KAR 1:430;

2. Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies as specified in KRS 205.768, if:

a. The advance notice is returned as undeliverable; and

b. Subsequent location efforts are unsuccessful; and

3. Submit the obligor's name and arrearage amount for inclusion on a periodic report made available to a certified consumer reporting agency, if the obligor does not pay in full or appeal within thirty (30) calendar days from the date of notice.

(2) If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation, as established in KRS 205.712(9) and (10), the cabinet shall:

(a) Determine if an obligor holds and, if so, take action against one (1) or more of the following:

1. Professional license or certificate;
2. Occupational license or certificate;
3. Recreational license;
4. Sporting license; or
5. Driver's license, for arrearages that have accrued since January 1, 1994;

(b) Send to the obligor, by certified mail:

1. A CS-44, Notice of Intent to Request Denial or Suspension, which includes a section for an Answer to Notice of Intent;
2. Notification that the obligor may request an administrative hearing contesting the action as specified in 921 KAR 1:430; and
3. Notification that the CS-63, Notice to Licensing/Certification Board or Agency shall be rescinded if the obligor:
  - a. Takes action as specified in Section 2(4)(g) of this administrative regulation; or
  - b. Complies with a subpoena or warrant, in accordance with KRS 205.712(11);
- (c) Refer the case for parent-locator service, if the CS-44 is returned and the forwarding address unknown;
- (d) Send to the issuing agency or board of licensure or certification a CS-63, if:
  1. There is no dispute; or
  2. The obligor does not take an action specified in paragraph (b)3 of this subsection;
- (e) Send to the issuing board or agency of licensure or certification a CS-63, within twenty (20) calendar days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:
  1. A license or certificate denial;
  2. Suspension; or
  3. Revocation; and
- (f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:
  1. Takes action as specified in Section 2(4)(g) of this administrative regulation; or
  2. Complies with a subpoena or warrant.

(3) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(4) If an obligor owes an arrearage equal to or greater than six (6) months obligation of an assigned support obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(a) The cabinet shall give prior notice in accordance with paragraph (b)1 of this subsection to the obligor of the date the appropriate local law enforcement personnel intend to boot a vehicle.

(b) The delinquent obligor shall:

1. Have ten (10) calendar days to respond to a notice of intent to boot a vehicle; and

2. Take action as specified in Section 2(4)(g) of this administrative regulation to release the vehicle boot.

(c) If the requirements in paragraph (b) of this subsection are met the:

1. Obligor shall pay the:

a. Forty (40) dollar cost of the removal of a vehicle boot to the appropriate local law enforcement personnel; and

b. Cost of towing and storage if a charge is incurred; and

2. Cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(5) A newspaper publication of a list of delinquent obligors, as established in KRS 405.411, provided by the Cabinet for Health and Family Services, Department for Income Support, Child Support Enforcement~~(Community Based Services, Division of Child Support)~~, shall:

(a) Identify an obligor as specified by subsection (7)(a) of this section;

(b) Include the name, last known address, and the amount owed of the obligor meeting the criteria; and

(c) Be published no less than twice yearly.

(6) If the obligor owes an arrearage of \$2,500 or more, in accordance with 42. U.S.C. 652, the cabinet shall:

(a) Take the action required by KRS 205.712(8);

(b) Provide the advance notice to the obligor required by KRS 205.712(8) by sending the obligor a CS-122; and

(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than \$2,500;

2. The obligor is in compliance with payments ordered in an existing arrearage judgment;

3. A payment reduces the arrearage to less than \$2,500; or

4. The obligor takes action as specified in Section 2(4)(g) of this administrative regulation.

(7) If an obligor owes an arrearage equal to or greater than \$10,000, the cabinet shall:

(a) Use the following criteria to designate an obligor for a delinquent listing:

1. The obligor's nonpayment within the last six (6) months;

2. The obligor's known address;

3. The cabinet is the payee for support; and

4. Audited arrearages by the cabinet within the last year;

(b) Provide to the Office of the Attorney General a delinquent listing no less than twice yearly for publication on the Internet, as established in KRS 15.055 and 205.712(16);

(c) Send to an obligor meeting the criteria in paragraph (a) of this subsection the CS-175, Notice of intent to Place Noncustodial Parent's Name on Delinquent Listing;

(d) Not include the obligor in the delinquent listing if the obligor takes action as specified in Section 2(4)(g) of this administrative regulation;

(e) Accept an obligor's request for an administrative hearing as specified in 921 KAR 1:430;

(f) Refer the case for parent-locator service if the notice is returned and the forwarding address unknown;

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(g) Include the obligor in the delinquent listing provided to the Office of the Attorney General if there is:

1. No dispute;
2. A hearing that results in a finding that the case qualifies for the delinquent listing; or
3. No action taken by the obligor as specified in Section 2(4)(g) of this administrative regulation; and

(h) Advise the Office of the Attorney General to remove an obligor from the listing, if the obligor takes action as specified in Section 2(4)(g) of this administrative regulation.

(8) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding, the cabinet shall:

- (a) Pursue action in accordance with the provisions of subsection (2) of this section; and
- (b) Notify the person that a license or certificate may be retained by complying with the subpoena or warrant.

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

- (a) "CS-44 Notice of Intent to Request Denial or Suspension", edition 4/09[9/06];
- (b) "CS-63 Notice to Licensing/Certification Board or Agency", edition 4/09[9/06];
- (c) "CS-68 Order to Withhold", edition 4/09[3/08];
- (d) "CS-69 Answer to Withhold", edition 4/09[9/06];
- (e) "CS-70 Release of Order to Withhold", edition 4/09[9/06];
- (f) "CS-72 National Medical Support Notice", edition 4/09[9/06];
- (g) "CS-73 Unemployment Insurance Letter", edition 4/09[3/08];
- (h) "CS-76 Unemployment Insurance Notice of Withholding", edition 4/09[3/08];
- (i) "CS-78 Payment Agreement", edition 4/09[9/06];
- (j) "CS-83 Order to Deliver", edition 4/09[9/06];
- (k) "CS-85 Notice of Lien", edition 4/09[9/06];
- (l) "CS-89 Income Withholding for Support", edition 4/09[3/08];
- (m) "CS-92 Intrastate Notice of Lien", edition 4/09[3/08];
- (n) "CS-119 Noncustodial Parent's Notice of Lien", edition 4/09[3/08];
- (o) "CS-120 Release of Lien" edition 4/09[9/06];
- (p) "CS-121 Noncustodial Parent's Answer to Withhold", edition 4/09[9/06];
- (q) "CS-121. 1. Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", edition 4/09[3/08];
- (r) "CS-122 Advance Notice of Intent to Collect Past-Due Support", edition 4/09[3/08];
- (s) "CS-164 Notice of Income Withholding" edition 4/09[9/06]; and
- (t) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 4/09[3/08].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601 [Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40624], Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENNO, Deputy Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2009 at 9 a.m. in the Cabinet for Health and Family Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2009, 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 February 2, 2009. 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: Shari Sullivan, CSE Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for collection and enforcement of child support.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment of procedures for collection and enforcement of child support.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 15.055(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, and by virtue of applying for federal funds under 42 U.S.C. 654, 659, 666 to establish procedures to collect and enforce child support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the Cabinet for collection and enforcement.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the agency name from Division of Child Support to Child Support Enforcement. The incorporated forms, "CS-44, Notice of Intent to Request Denial or Suspension", "CS-63, Notice to Licensing/Certification Board or Agency", "CS-68, Order to Withhold", "CS-69, Answer to Withhold", "CS-70, Release of Order to Withhold", "CS-72, National Medical Support Notice", "CS-73, Unemployment Insurance Letter", "CS-76, Unemployment Insurance Notice of Withholding", "CS-78, Payment Agreement", "CS-83, Order to Deliver", "CS-85, Notice of Lien", "CS-89, Income Withholding for Support", "CS-92, Intrastate Notice of Lien", "CS-119, Noncustodial Parent's Notice of Lien", "CS-120, Release of Lien", "CS-121, Noncustodial Parent's Answer to Withhold", "CS-121.1, Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", "CS-122, Advance Notice of Intent to Collect Past-Due Support", "CS-164, Notice of Income Withholding", and "CS-175, Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing" were updated to reflect the new agency name due to the reorganization of the agency structure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate corrections and to update state form used in accordance with KRS Chapters 205, 405, and 407.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the cabinet in establishing collection and enforcement of child support.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through its updates to state forms incorporated by reference in this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates to the state forms incorporated by reference in this regulation will affect the Child Support Enforcement Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

tive 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 Incorporated materials have been updated to reflect the program name changed.

(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 fees and no increase in funding for this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no benefit for the entities involved. Continuance of child support enforcement services at no additional cost.

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

(a) Initially: There are no fees and no increase in funding for this administrative regulation.

(b) On a continuing basis: There are no fees and no increase in funding on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

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

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

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

#### 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 Income Support, Child Support Enforcement is 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 15.055(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520

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? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to 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? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to 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 incurred to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment.

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 Income Support

##### Child Support Enforcement

##### (Amendment)

#### 921 KAR 1:430. Child support administrative hearings.

RELATES TO: KRS Chapter 13B, 15.055, 205.710, 205.712, 205.745, 205.7685, 205.769, 205.778, 237.110(4)(f), 341.392, 341.420, 405.411, 405.440(4), 405.450(5), 405.463, 405.465, 405.467, 405.470, 405.490(4)

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), 205.712, 45 C.F.R. 303.35, 42 U.S.C. 666

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, or to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires each state to have in effect procedures to increase the effectiveness of the Child Support Enforcement Program. 45 C.F.R. 303.35 requires the agency administering the Child Support Enforcement Program to develop a procedure for administrative reviews of child support cases for individuals with complaints. KRS Chapter 13B establishes the administrative hearing process to be followed in the Commonwealth. KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes the administrative hearing procedures used by the cabinet in the administration of the Child Support Enforcement Program.

Section 1. Availability of a Hearing. (1) An opportunity for an administrative hearing shall be provided to an individual aggrieved by an action or inaction:

(a) On the part of the Child Support Enforcement Program[Division of Child Support]; and

(b) That affects the child support case of the individual.

(2) An individual requesting an administrative hearing shall have the option to designate a representative to act on behalf of the aggrieved party for the hearing process, such as:

(a) Legal counsel;

(b) A relative; or

(c) Any other person.

(3) An administrative hearing shall be conducted by an administrative hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch:

(a) In the county of residence for the appellant or child; or

(b) By telephone or at an alternate location, if the appellant:

1. Is unable to travel; and

2. Requests alternate hearing arrangements at least five (5) calendar days in advance of the scheduled hearing.

(4) If the appellant or authorized representative speaks a language other than English, the cabinet shall ensure that interpreter services are provided for the administrative hearing.

(5) Child support enforcement staff shall schedule and hold an informal interview or conference with an aggrieved individual:

(a) Within ten (10) calendar days of receiving the individual's hearing request;

(b) Prior to an administrative hearing being scheduled; and

(c) To attempt resolution of the dispute.

(6) If the informal conference does not resolve the issue, the hearing request shall be sent to the Families and Children Adminis-



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trative Hearings Branch as specified in Section 2 of this administrative regulation for scheduling.

Section 2. Request for a Hearing. (1) An individual shall request an administrative hearing by:

(a) Completing and submitting a CS-180, Request for Administrative Hearing;

(b) Submitting a written request; or

(c) Making an oral request, which is then transferred into a written request within the timeframes specified in subsection (4) of this section.

(2) An administrative hearing request shall be submitted to the:

(a) Child support contracting official's office in the appellant's county of residence; or

(b) Child Support Enforcement's~~Division of Child Support's~~ central office.

(3) The count of days specified in subsection (4) of this section shall begin from the date of:

(a) Issuance, if the notice is sent by first class mail; or

(b) Receipt, if the notice is personally served or sent by certified mail.

(4) A written request for an administrative hearing shall be considered timely if received by the cabinet within:

(a) Ten (10) calendar days of:

1. An income withholding notice;

2. A notice of intent to boot a vehicle, in accordance with KRS 205.745(9); or

3. A notice of intent to request a credit report, in accordance with KRS 205.7685;

(b) Fifteen (15) calendar days of a notice of withholding from unemployment insurance, pursuant to KRS 341.392 and 341.420;

(c) Twenty (20) calendar days of:

1. An initial notice of monthly support obligation, in accordance with KRS 405.440(4);

2. An order to withhold assets, in accordance with KRS 405.490(4);

3. A request for denial or suspension of a license or certificate;

4. A lien notice, in accordance with KRS 205.745(6); or

5. A notice to place the obligor's name on the delinquent listing; or

(d) Thirty (30) calendar days of a:

1. Modified notice of monthly support obligation, in accordance with KRS 405.450(5);

2. Notice that an obligation amount was reviewed without change, in accordance with KRS 405.450(5); or

3. Notice regarding the collection of past-due support in accordance with KRS 154A.060(2)(g), 205.712(17), and 205.769.

(5) In accordance with KRS 205.712(13), an individual shall be granted an administrative hearing based upon a mistake in fact, such as an incorrect:

(a) Person identified as an obligor; or

(b) Current or past due support obligation.

(6) An appellant or authorized representative may withdraw an administrative hearing request by submitting a written request to the:

(a) Families and Children Administrative Hearings Branch, as specified in Section 3 of this administrative regulation; or

(b) Child support enforcement office that accepted the original request for an administrative hearing.

Section 3. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge an administrative hearing request.

(2) A notice of an administrative hearing shall:

(a) Comply with the requirements of KRS 13B.050(3);

(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and

(c) Specify that the hearing request shall be dismissed if an appellant or the authorized representative fails to appear for an administrative hearing without good cause as specified in Section 4(3) of this administrative regulation.

(3) Pursuant to KRS 405.450(1), the cabinet shall schedule an administrative hearing within sixty (60) calendar days of an individual's hearing request.

(4) An administrative hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

(5) An individual that fails to appear for a scheduled hearing shall receive notification to provide good cause within ten (10) calendar days.

Section 4. Denial or Dismissal of an Administrative Hearing Request. (1) A hearing request shall be denied or dismissed if the:

(a) Request is not based on a mistake of fact as specified in Section 2(5) of this administrative regulation;

(b) Request is untimely and good cause, as defined in subsection (3) of this section, is:

1. Not claimed; or

2. Found not to exist.

(c) Appellant submits a written request to withdraw the administrative hearing request; or

(d) Appellant or an authorized representative fails to appear for the scheduled hearing without:

1. Notifying the cabinet prior to the hearing; or

2. Establishing good cause for failure to appear, as defined in subsection (3) of this section.

(2) A claim of good cause for an untimely hearing request or failure to appear at an administrative hearing shall be established within ten (10) calendar days of receipt of a notice to provide good cause.

(3) Upon receipt of a good cause claim, a hearing officer shall determine if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or comprehend the right to request an administrative hearing on the notice received;

(c) Moved, resulting in a delay in receiving or failure to receive the notice in the required time period;

(d) Was suffering from a serious illness;

(e) Was caring for an immediate household member who had a serious illness; or

(f) Was not at fault for the delay of the request, as determined by the hearing officer.

(4) The cabinet shall notify an appellant of the dismissal of an administrative hearing request by sending a recommended order of dismissal.

Section 5. Appellant's Rights. (1) An appellant or an appellant's legal representative shall have the right to examine and copy case material pertinent to the dispute before or during the hearing process in accordance with KRS 13B.090(3).

(2) The cabinet shall release case information as specified in subsection (1) of this section to the appellant's authorized representative if the appellant provides written authorization that is:

(a) Signed in the presence of child support enforcement staff who shall also sign as a witness; or

(b) Notarized.

(3) An appellant or representatives shall have the right to:

(a) Examine, prior to the hearing:

1. The list of witnesses to be called during the hearing;

2. Evidence to be presented at the hearing; and

3. Other information in the cabinet's possession that pertains to the hearing;

(b) Present witnesses or documents to support the appellant's claim; and

(c) Appeal the decision of the final order of the hearing to Circuit Court in accordance with KRS 13B.140.

Section 6. Obligation Pending a Hearing or Appeal. (1) If a hearing request is based on the dispute of:

(a) An initial notice of monthly support obligation, the obligation shall be stayed until a final order of the Commissioner of the Department for Income Support~~Community-Based Services~~ or designee is issued, in accordance with KRS 405.450(2); or

(b) The findings of a modification review of an administratively established obligation, the amount of the existing obligation shall be:

1. Enforceable; and
2. Paid by the obligor pending receipt of the final order.

(2) If the action taken on behalf of the Child Support Enforcement Program~~[Division of Child Support]~~ is:

(a) Upheld, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation; or

(b) Found to be incorrect, the cabinet shall return to the obligor any overpayment made since the date the administrative hearing was requested.

(3) If an appellant files an appeal of the final order with the Circuit Court, the appellant shall be obligated to pay the amount listed on the notice of monthly support obligation while the appeal is pending.

Section 7. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order that:

- (a) Summarizes the facts of the case;
- (b) Specifies the address where a party to the hearing may send an exception to the recommended order; and
- (c) Identifies the:
  1. Findings of fact;
  2. Conclusions of law;
  3. Supporting evidence; and
  4. Applicable state and federal laws and regulations.

(2) In accordance with KRS 13B.110, the hearing officer shall issue the recommended order to the Commissioner of the Department for Income Support~~[Community-Based Services]~~ or designee within sixty (60) calendar days of the close of the hearing record.

(3) A copy of the recommended order shall be sent to the:

- (a) Appellant or representative;
- (b) Child support enforcement staff that attended the administrative hearing; and
- (c) Designated staff of the Child Support Enforcement's~~[Division of Child Support's]~~ central office.

Section 8. Written Exceptions. (1) If a party to the hearing disagrees with the recommended order, the party may file a written exception with the Commissioner or designee.

(2) A written exception shall:

- (a) Be filed in accordance with KRS 13B.110(4);
- (b) Be based on facts and evidence presented at the hearing;
- (c) Not refer to evidence that was not introduced at the hearing; and
- (d) Be sent to the other parties that attended the administrative hearing.

Section 9. Final Order. (1) A final order shall be issued:

- (a) In accordance with KRS 13B.120;
- (b) By the commissioner or designee on behalf of the cabinet; and
- (c) Within ninety (90) calendar days of the recommended order, unless the recommended order is remanded in accordance with KRS 13B.120(4).

(2) If the final order differs from the recommended order, the final order shall comply with KRS 13B.120(3).

Section 10. Incorporation by Reference. (1) "CS-180, Request for Administrative Hearing", edition 4/09~~[3/08]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601~~[Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621]~~, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENNO, Deputy Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2009 at 9 a.m. in the Cabinet for Health

and Family Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2009, 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 February 2, 2009. 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: Shari Sullivan, CSE Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the administrative hearing procedures used by the Cabinet in the administration of the Child Support Enforcement Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for conducting administrative hearings related to the Child Support Enforcement Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under 42 C.F.R. 303.35 and KRS 13B to provide an administrative hearing process for the Child Support Enforcement program recipients who have complaints regarding their child support cases.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform administrative hearing process to be used by the Cabinet in the administration of the Child Support Enforcement Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the department and program name. The incorporated form, "CS-180, Request for Administrative Hearing" was updated to reflect the new agency name due to the reorganization of the cabinet structure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate corrections and to update the state form used in accordance with KRS Chapters 205 and 405.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet in establishing the uniform administrative hearing process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through its updates to the state form incorporated by reference in this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates to the state form incorporated by reference in this regulation will affect the Child Support Enforcement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The incorporated materials have been updated to reflect the department and program name changed.

(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 fees and no increase in funding for this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no benefit for the entities involved. Continuance of child support enforcement services at no additional cost.

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

(a) Initially: There are no fees and no increase in funding for this administrative regulation.

(b) On a continuing basis: There are no fees and no increase in funding on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

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

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

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

#### 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 Income Support, Child Support Enforcement is 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 13B.170, 194A.050(1), 205.712, 405.450, 45 C.F.R. 302.10, 303.35

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? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to 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? The child support program has been operational for numerous years and does not directly generate any revenue. The amendment to 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 incurred to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

#### 921 KAR 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274.6, 274.12, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179, Pub.L. 110-246  
STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 273.10

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Food Stamp Program within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsections (3) and (4) of this section, a household shall be certified for at least six (6) months.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a six (6) month or twelve (12)~~twenty-four (24)~~ month certification as specified in subsections (2) and (4) of this section.

(4) A household shall be certified for twelve (12)~~twenty-four (24)~~ months if all members:

(a) Are either elderly or have a disability, as defined in 921 KAR 3:010; and

(b) Have no earned income.

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day but prior to the last day of the last month of the certification, the cabinet shall:

4-] allow the household thirty (30) days to return verification or complete a required action; ~~or~~and]

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures.

(1) A household with a self-employed member shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or

2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and

2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as follows:

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included when:

1. Assigning benefit levels;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as follows:

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as follows:

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, when determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as follows:

(a) An eligible household shall include:

1. A narcotic addict; or

b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the facility's authorized representative.

(c) Food stamp processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment center shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the center, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The organization or institution shall be responsible for knowingly misrepresenting a household circumstance.

(7) The following case processing procedures shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2:

(a) ~~Application shall be made by~~ a resident ~~[shall apply on his own behalf]~~ or through use of the facility's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies ~~[on his own behalf]~~, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as follows:

(a) The shelter shall:

1. Have ~~FNS[Food and Nutrition Service (FNS)]~~ authorization to redeem food benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2~~;~~]

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g)~~;~~ and]

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as follows:

(a) An Application may be filed at the:

1. Social Security Administration (SSA) Office; or

2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7[6] of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The Food Stamp Program's gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency food stamp benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C., 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) ~~[If a household does not meet criteria specified in Section 2(4) of this administrative regulation, the household shall be required to report.]~~ Within ten (10) days of the end of the month in which the change occurs, a household shall be required to report a change which causes:

(a) The household's gross monthly income to exceed 130% of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025(8)(b), to work less than twenty (20) hours per week.

(2) ~~[If a certified household meets criteria in Section 2(4) of this administrative regulation, the household shall report a change in circumstance within ten (10) days of the date the change becomes known to the household.]~~

(3) An applying household shall report a change related to its food stamp eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

PATRICIA R. WILSON, Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2009 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 January 14, 2009, 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 February 2, 2009. 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: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification process used by the cabinet in the administration of the Food Stamp Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for certifying households applying for Food Stamp benefits for a defined period of time.

(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 prescribing certification processes and time periods for households eligible under Kentucky's Food Stamp Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assist with the effective administration of the statutes by establishing criteria used by the cabinet in the assignment of certification periods for eligible Food Stamp Program households.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this administrative regulation by expanding simplified reporting requirements to elderly and disabled household with no earned income, and reducing the certification period of these households from twenty four (24) months to twelve (12) months. This change will also eliminate the need for the twelve (12) month review.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement the simplified reporting option made available in The Food, Conservation, and Energy Act of 2009 (Pub.L. 110-246). Changing the certification period, from twelve (12) to twenty-four (24) months, for households containing all elderly or disabled individuals with no earned income, will reduce agency errors and possibility for a federally imposed corrective action.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing program options found in Pub.L. 110-246 and 7 C.F.R. 273. 2.

(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 aligning reporting requirements and certification procedures for all Food Stamp Program households.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Food Stamp Program households with elderly or disabled individuals having no earned income will be affected by the amendment to this administrative regulation. There are approx-

imately 74,000 households that meet these criteria and currently participate in Kentucky's Food Stamp Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require households identified in item (3) to re-certify their Food Stamp Program application every twelve (12) months to receive uninterrupted benefits; however, these households will no longer be subject twelve (12) month case reviews.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves a cost to Food Stamp Program applicants or participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Households that contain all elderly or disabled individuals with no earned income will benefit from the amended administrative regulation through the same reporting requirements as other households, receipt of precise benefits as a result of case re-certification every twelve (12) months, and elimination of the error prone twelve (12) month review.

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

(a) Initially: No additional funding is initially required.

(b) On a continuing basis: No additional funding is needed on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Food Stamp Program benefits are 100% federally funded through the United States Department of Agriculture. Program administrative costs are funded 50% federal and 50% state, which have been appropriated in the enacted budget.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.10, Pub.L. 110-246

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.10, Pub.L. 110-246

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

#### 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

Community Based 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. 7 C.F.R. 271.4, 273.10, Pub.L. 110-246, KRS 194A.050(1)

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 revenue for the state or local government during the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Family Support (Amendment)

#### 921 KAR 3:042. Food Stamp Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d), Pub.L. 110-246

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Food Stamp Employment and Training Program. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program (E&T).

Section 1. Definitions. (1) [Employment and training program" or "E&T" means a program with work experience, education, or training components, designed to assist able-bodied food stamp recipients in obtaining employment and becoming self-sufficient.

(2) "Exempt" means excused by the agency from participation in the E&T.

(2) [(3)] "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.

(3) [(4)] "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2. Work Registration. (1) Unless exempt from work requirements as specified in subsection (4) of this section, a household member [in subsection (4) of this section,] shall register for work:

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- (a) At the time of initial application for food stamps; and
- (b) Every twelve (12) months following the initial application.
- (2) Work registration shall be completed by the:
  - (a) Member required to register; or
  - (b) Person making application for the household.
- (3) Unless otherwise exempt, a household member excluded from the food stamp case shall register for work during periods of disqualification. An excluded person may be an:
  - (a) Ineligible alien; or
  - (b) Individual disqualified for:
    - 1. Refusing to provide or apply for a Social Security number; or
    - 2. An intentional program violation.
- (4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.
- (5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).
- (6) After registering for work, a nonexempt household member shall:
  - (a) Respond to a cabinet request for additional information regarding employment status or availability for work;
  - (b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or
  - (c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program, as assigned by the cabinet.
- (7) A household member making a joint application for SSI[, as defined in 921 KAR 3:040,] and food stamps in accordance with 921 KAR 3:035, shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).
- (8) The E&T worker shall explain to the food stamp applicant the:
  - (a) Work requirements for each nonexempt household member;
  - (b) Rights and responsibilities of the work-registered household members; and
  - (c) Consequences of failing to comply.

Section 3. E&T Participation. (1) An individual subject to the work requirement of 921 KAR 3:025, Section 3(8) shall participate in the E&T Program.

- (2) An E&T participant shall:
  - (a) Attend and complete an initial assessment interview;
  - (b) Be placed in:
    - 1. VEST; or
    - 2. WEP;
  - (c) ~~[Receive a reimbursement for actual expenses incurred while participating in the E&T Program up to twenty-five (25) dollars per month, if otherwise eligible; and~~
  - (d) Complete and return to the cabinet a FSET-108, ["Job Search Contact Report[", or a FSET-145, ["Employment and Training Program Activity Report[", in order to verify participation, ~~and be reimbursed for participation expenses, as specified in paragraph (c) of this subsection.]~~
  - (3) Payment for transportation, up to twenty-five (25) dollars per month, shall be provided to an individual participating in the E&T program if the individual:
    - (a) Incurs or plans to incur a transportation expense in order to participate; and
    - (b) Completes and returns to the cabinet a FSET-108 or a FSET-145 stating the anticipated need.~~[A participant who withdraws or is terminated, voluntarily or involuntarily, from the program, shall:~~
      - (a) ~~Be provided with a FSET-119, Food Stamp "Employment and Training Program Notification of Termination"; and~~
      - (b) ~~Complete and file the FSET-119 or other documentation of expenses with the cabinet in order to be reimbursed in accordance with subsection (2)(c) of this section.]~~

Section 4. Components. (1) A county offering the E&T Program shall offer the following services and activities:

- (a) The VEST Program consisting of:
  - 1. Vocational school; or
  - 2. On-the-job training; and

- (b) The WEP Program consisting of:
  - 1. Job search; and
  - 2. Work placement.
- (2) An individual participating in VEST shall:
  - (a) Attend training courses for at least twenty (20) hours per week; and
  - (b) Participate in the WEP component until a VEST placement is available;
- (3) An individual participating in WEP shall:
  - (a) Complete an initial assessment and develop an employability plan;
  - (b) Participate in the initial thirty (30) days of job search;
  - (c) Complete and file with the cabinet the FSET-108;;
  - (d) Provide written verification by the WEP provider of E&T Program activities to the cabinet; and
  - (e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(8), by:
    - 1. Accepting the offer of a work site placement; and
    - 2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.
- (4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(8), shall be determined by the participant's monthly food stamp allotment divided by the current federal minimum wage.~~[comparing the monthly food stamp allotment to the Work Experience Program Table, incorporated by reference in this administrative regulation.]~~
- (5) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by dividing the:
  - (a) ~~[Dividing the] Food stamp allotment by the number of individuals who are subject to the work requirement; and~~
  - (b) Individual pro rata share of the food stamp allotment by the current federal minimum wage.~~[Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program Table.]~~

Section 5. Conciliation. (1) If a participant fails to comply with the E&T Program:

- (a) The participant shall be mailed a FSET-102 ["Conciliation Contact and Request for Information["] form; and
- (b) A conciliation period shall be initiated.
- (2) The conciliation period shall be used to:
  - (a) Determine the reason for the noncompliance; and
  - (b) Allow the participant the opportunity to resolve the problem in order to continue participation.
- (3) Conciliation shall last for fifteen (15) days, during which time the E&T worker shall:
  - (a) Determine if the participant demonstrates good cause for noncompliance;
  - (b) Encourage the participant to resume an E&T Program activity; or
  - (c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.
- (4) If the participant resumes the E&T Program activity, a disqualification~~[sanction]~~ shall not be imposed.
- (5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

- (a) Work registrant has failed to comply with:
  - 1. Work registration requirements as established in Section 2 of this administrative regulation; or
  - 2. E&T requirements as established in Section 3 of this administrative regulation; or
- (b) Household member has, as described in Section 9 of this administrative regulation, voluntarily:
  - 1. Quit a job; or

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2. Reduced his work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

- (a) Illness of the individual;
- (b) Illness of another household member requiring the presence of the individual;
- (c) A household emergency;
- (d) Unavailability of transportation; and
- (e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

- (a) A circumstance specified in subsection (2) of this section exists;
- (b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(h); or
- (c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.

Section 7. Disqualification. (1) A mandatory participant shall be disqualified from the receipt of food stamp benefits when the participant; ~~[Disqualifications shall be imposed on a household member who:]~~

- (a) ~~[1. Is a mandatory participant; and~~
- ~~b.]~~ Fails to comply with the work registration or E&T program requirements; or

(b) Is determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 of this administrative regulation.

(2) An individual disqualified from participation in the Food Stamp Program shall be ineligible to receive food stamp benefits until the latter of the:

- (a) Date the individual complies; or
- (b) Lapse of the following time periods:
  - 1. Two (2) months for the first violation;
  - 2. Four (4) months for the second violation; or
  - 3. Six (6) months for the third or a subsequent violation.
- (3) Ineligibility shall continue until the ineligible member:
  - (a) Becomes exempt from the work registration; or
  - (b) 1. Serves the disqualification period specified in subsection (2) of this section; and
  - 2. Complies with the requirements of:
    - a. Work registration; or
    - b.. The Employment and Training Program.
- (4) A disqualified household member who joins a new household shall:
  - (a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section;
  - (b) Have income and resources counted with the income and resources of the new household; and
  - (c) Not be included in the household size when determining the food stamp allotment.

Section 8. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for food stamps or any time after application, an individual shall not be eligible to participate in the Food Stamp Program if the individual voluntarily and without good cause:

- (a) Quits a job:
  - 1. Of thirty (30) hours or more per week; and
  - 2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or
- (b) Reduces his work effort to less than thirty (30) hours per week, and after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) A disqualification period established in Section 7 of this administrative regulation shall be imposed.

Section 9. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) ~~[Following the minimum period of disqualification imposed pursuant to Section 7(2) of this administrative regulation.]~~ Eligibility and participation may be reestablished by:

- (a) Securing new employment with salary or hours comparable to the job quit; ~~[or]~~

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 7(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in the Food Stamp Program ~~[following a disqualification period, as established in Section 7(2) of this administrative regulation, if the individual applies again and is determined to be eligible].~~

(3) If an individual becomes exempt from work registration, the disqualification period shall end and the individual shall be eligible to apply to participate in the Food Stamp Program.

Section 10. Hearing Process. If aggrieved by an action that affects participation, a food stamp participant~~[work registrant]~~ may request a hearing in accordance with 921 KAR 3:070.

Section 11. Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

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

(a) "FSET-102, Conciliation Contact and Request for Information", edition 4/09~~[11/06]~~;

(b) "FSET-108, Job Search Contact Report", edition 4/09~~[11/06]~~;

~~(c) ["FSET-119, Food Stamp Employment and Training Program Notification of Termination", edition 11/06;~~

~~(d)] "FSET-145, Employment and Training Program Activity Report", edition 4/09~~[11/06]~~; and~~

~~(e) "The Work Experience Program Table", edition 3/97.]~~

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2009 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 January 14, 2009, 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 February 2, 2009. 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: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards of



technical eligibility for the Food Stamp Employment and Training Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under 7 C.F.R. 273.7 to design and operate a Food Stamp Employment and Training Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes for the Food Stamp Employment and Training Program by establishing the technical eligibility requirements in accordance with 7 C.F.R. 273.7.

(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 includes:

Replacing the Work Experience Program (WEP) table with a formula. This change will ensure the program reflects future adjustments to the federal minimum wage. Correcting the non-discrimination statement on forms FSET-102, Conciliation Contact and Request for Information; FSET-108, Job Search Contact Report; and FSET-145, Employment and Training Program Activity Report. Removing the reference to FSET-119, Food Stamp Employment and Training Program Notification of Termination, as the form is obsolete. Clarifying language that compliance activity is not needed after the required disqualification period has been served for a voluntary quit/reduction of work effort disqualification; Paying E&T recipients' transportation expenses as a projected anticipated amount, rather than as a reimbursement. This provision is extremely underutilized and is under review by U.S. Department of Agriculture, Food Nutrition Service (FNS). The amount will remain up to twenty-five (25) dollars per month. Making other technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation clarifies disqualification requirements, ensures that incorporated forms comply with requirements prescribed by the FNS-Office of Civil Rights, and implements program options found in 7 C.F.R. 273.7.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing requirements and options established by 7 C.F.R. 273.7.

(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 clarifying procedures, and implementing options and requirements outlined in 7 C.F.R. 273.7.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Employment and Training participants are affected by this administrative regulation. There are approximately 823 individuals currently participating.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of Food Stamp Employment and Training Program applicants or participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves a cost to Food Stamp Employment and Training Program applicants or participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Food Stamp Employment and Training participants will benefit by having the correct non-discrimination statement on program forms, have clear and correct language concerning the penalty for voluntary quit/reduction of work effort disqualification, and be better able to participate in the Employment and Training Program by having transportation money available when participation begins.

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

(a) Initially: No additional funding is initially required.

(b) On a continuing basis: No additional funding is needed on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Food Stamp Employment and Training Program receives an annual grant from the Food and Nutrition Service to cover 100% of operational costs. The transportation expense is 50% federally funded and 50% state funded, which have been appropriated in the enacted budget based on full utilization.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.7

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 273.7

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

#### 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 Community Based 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 194A.050 (1), 7 C.F.R. 273.7

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

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

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

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

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

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

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Amendment)**

**921 KAR 3:050. Claims and additional administrative provisions.**

RELATES TO: 7 C.F.R. 272.1, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.18

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Food Stamp Program. 7 C.F.R. 273.18 requires the agency administering the Food Stamp Program to develop a process to establish and collect claims. This administrative regulation establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of the Food Stamp Program.

Section 1. Responsibility for a Claim. The following individuals shall be responsible for paying a recipient claim as defined in 921 KAR 3:010:

- (1) An individual who was an adult member of the household during the time period when the overissuance or trafficking occurred;
- (2) A sponsor of an alien household member if the sponsor is at fault; or
- (3) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overissuance or trafficking.

Section 2. Claim Category. (1) As specified in 921 KAR 3:010, a recipient claim shall be classified as an:

- (a) Inadvertent household error (IHE);
- (b) Agency error (AE); or
- (c) Intentional program violation (IPV).

(2) Until fraud is substantiated, an IPV claim shall be established as an IHE with a Suspected Intentional Program Violation (SIPV), indicator.

Section 3. Acting on a Change. (1) A claim shall be established if a household:

- (a) Fails to report a change in circumstance in accordance with the timeframes specified in 921 KAR 3:035; or
- (b) Reports a change within the required timeframe, but the cabinet fails to act on the change within ten (10) days of the date the change is reported.

(2) The first month of overissuance, as defined in 921 KAR 3:010, shall:

- (a) Be the first month that the change would have been effective had it been timely:
  1. Reported by the household; or
  2. Acted upon by the cabinet; and

(b) Not exceed two (2) months from the month the change in circumstance occurred.

Section 4. Calculating the Amount of a Recipient Claim. (1) In accordance with 7 C.F.R. 273.18(c), unless a claim is related to trafficking, the cabinet shall:

(a) Calculate:

1. An IHE or AE claim back to twelve (12) months prior to when the cabinet became aware of the overissuance, unless an IHE has an SIPV indicator; and

2. An IPV claim or an IHE claim with as SIPV indicator back to the month the fraudulent act first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance;

(b) Determine the correct amount of food stamp benefits for each month that a household received an overissuance;

(c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, as specified in Section 3 of this administrative regulation, if:

1. The claim is classified as an IPV or IHE; and
2. The IHE or IPV is the basis for the recipient claim;

(d) Subtract the correct amount of food stamp benefits from the benefits actually received and the difference shall be the amount of the overissuance; and

(e) Deduct any food stamp benefits that are designated to be expunged from a household's EBT [Electronic Benefit Transfer, or EBT,] account from the amount of overissuance:

1. When the recipient claim is initially calculated; and
2. At each subsequent expungement until the balance of the claim is paid in full.

(2) If a claim is related to trafficking, the cabinet shall calculate the value of the trafficked food stamp benefits as determined by:

- (a) An individual's admission;
- (b) Adjudication; or
- (c) The documentation that forms the basis for the trafficking determination.

(3) The amount of a claim may differ from a calculation obtained through the methods outlined in subsections (1) and (2) of this section if a different amount is ordered by:

- (a) An administrative hearing officer or agency head in accordance with: 921 KAR 3:060 or 921 KAR 3:070; or
- (b) A court.

(4) In accordance with 7 C.F.R. 273.18(e)(2), the cabinet shall not establish a recipient claim if the claim referral is \$125 or less, unless the:

- (a) Household is currently participating in the Food Stamp Program; or
- (b) Recipient claim was established or discovered through a quality control review.

Section 5. KCD-1. (1) A ["KCD-1, General Claims Notice"] shall serve many purposes in the administration of claims collections, including the use as:

- (a) An appointment notice;
- (b) A demand letter;
- (c) Notification of benefit reduction;
- (d) A past due notice;
- (e) A repayment agreement;
- (f) A claim adjustment notice;
- (g) A claim termination notice;
- (h) A payment receipt;
- (i) Notice of a suspended claim;
- (j) Notice of a claim being paid in full; or
- (k) Notification that a delinquent claim shall be sent to the U.S. Department of Treasury for collection.

(2) The language on the KCD-1 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 6. Notification of a Claim. (1) A household with a suspected claim shall be mailed a KCD-1 notifying the household of an appointment to:

- (a) Discuss the potential claim;
- (b) Determine the classification of the claim, as specified in Section 2 of this administrative regulation; and

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(c) Offer the recipient an opportunity to waive the administrative disqualification hearing if the claim is suspected to be an IPV.

(2) If a household requests to reschedule the appointment within ten (10) days of the date of the notice, the appointment shall be rescheduled.

(3) The cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet if the household:

(a) Fails to attend the appointment to discuss the potential claim; and

(b) Does not contact the cabinet to reschedule the appointment.

(4) When the cabinet determines the amount of a recipient claim, in accordance with Section 4 of this administrative regulation, collection shall be initiated and a KCD-1 shall be mailed to notify the household of the claim:

(a) Amount;

(b) Time period;

(c) Reason; and

(d) Category, as specified in Section 2 of this administrative regulation.

(5) The household shall return the KCD-1 within ten (10) days of receipt if the household chooses to:

(a) Initiate a repayment agreement; or

(b) Request a hearing on the claim.

### Section 7. Collection Methods. (1) Benefit reduction.

(a) A household that is participating in the Food Stamp Program shall have payments on the claim made by reducing its monthly food stamp benefits through benefit reduction by the following amount:

1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly benefits or entitlement, unless the household agrees to a higher amount; or

2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly benefits, unless the household agrees to a higher amount.

(b) The cabinet shall not use additional collection methods against individuals in a household that is already having its benefits reduced unless the:

1. Additional payment is voluntary; or

2. Source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.

(2) A household may pay its claim using benefits from its food stamp EBT ~~[benefit]~~ account if the household gives the cabinet permission:

(a) By completing and returning a KCD-1 or other written statement requesting this option; or

(b) Through an oral request for a one (1) time reduction and the cabinet provides the household with a receipt for the transaction within ten (10) days.

(3) If the cabinet becomes aware of expunged food stamp EBT benefits, the claim balance shall be reduced by an amount equal to the expunged benefits.

(4) During the claim establishment and collection process, the cabinet shall:

(a) Deduct the amount of an outstanding recipient claim from food stamp benefits that may be owed to a household; and

(b) Send the household a KCD-1 as notification of the adjustment.

(5) A lump sum payment on a recipient claim:

(a) Shall be accepted by the cabinet; and

(b) May be a full or partial payment.

(6) If a household is not participating in the Food Stamp Program, the cabinet shall:

(a) Negotiate a repayment agreement, either orally or in writing, which includes a repayment schedule; and

(b) Employ additional collection methods if the claim becomes delinquent through the household's failure to submit a payment in accordance with the negotiated repayment agreement.

(7) In accordance with 7 C.F.R. 273.18(g), the cabinet may employ other collection methods to collect a recipient claim, such as:

(a) Referral to a public or private sector collection agency;

(b) Lottery offsets;

(c) Wage garnishment;

(d) The intercept of unemployment compensation benefits;

(e) State income tax refund intercept; or

(f) The intercept of any eligible federal payment owed the debtor~~[a federal tax refund]~~ through the Treasury Offset Program (TOP)~~[, or TOP]~~.

(8) The cabinet shall:

(a) Refer a recipient claim that is delinquent for 180 or more days to TOP, unless the debtor is a member of a participating household that is undergoing benefit reduction to collect a recipient claim; and

(b) Remove a recipient claim from TOP if the:

1. FNS~~[Food and Nutrition Service]~~ or U.S. Department of the Treasury instructs the cabinet to withdraw a recipient claim;

2. Cabinet discovers that the debtor:

a. Is a member of a food stamp household undergoing benefit reduction; or

b. Has made an arrangement to resume payments; or

3. Claim:

a. Has been paid off;

b. Was disposed of through a hearing, termination, or compromise; or

c. Was referred to TOP in error.

Section 8. Delinquent Recipient Claims. (1) In accordance with 7 C.F.R. 273.18(e)(5), a recipient claim shall be considered delinquent if:

(a) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(b) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(2) The date of delinquency for a claim shall be the due date on the:

(a) Initial written notification if the claim meets the criteria of subsection (1)(a) of this section; or

(b) Missed installment payment if the claim meets the criteria of subsection (1)(b) of this section.

(3) Pursuant to 7 C.F.R. 273.18(e)(5)(ii), the claim shall remain delinquent until:

(a) Payment is received in full;

(b) Benefit reduction, as described in Section 7 of this administrative regulation, is implemented; or

(c) A satisfactory payment agreement is negotiated for a claim meeting the criteria of subsection (1)(a) of this section.

(4) A claim shall not be considered delinquent if:

(a) Another claim for the same household is currently being paid either through an installment agreement or benefit reduction; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(5) If the cabinet is unable to determine delinquency status because claim collection is coordinated through the court system, a claim shall not be subject to the requirements for delinquent debts.

(6) A claim awaiting a fair hearing decision shall not be considered delinquent.

(7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:

(a) Renotify the household of the claim; and

(b) Base delinquency on the due date of the subsequent notice.

(8) If a hearing official determines that a claim does not exist, the cabinet shall:

(a) Dispose of the recipient claim in accordance with Section 9(2) of this administrative regulation; and

(b) Send a KCD-1 to notify the household of the terminated claim.

### Section 9. Compromising, Terminating, and Writing-off Claims.

(1) Except for a recipient claim that is established by a court of the

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appropriate jurisdiction, the cabinet may compromise a claim or a portion of a claim if:

(a) A request for compromise is received from the household; and

(b) In accordance with 7 C.F.R. 273.18(e)(7), the cabinet can make a reasonable determination that the household will be unable to pay off the claim within three (3) years.

(2) In accordance with 7 C.F.R. 273.18(e)(8), a claim shall be terminated and written off if:

(a) The claim:

1. Is invalid, unless it is appropriate to pursue the overissuance as a different type of claim;

2. Balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years and, in accordance with 7 C.F.R. 273.18(n), cannot be pursued through TOP;

(b) All adult household members, as specified in Section 1(1) of this administrative regulation, die; or

(c) The cabinet is unable to locate the household.

Section 10. Restoration of Benefits. (1) Benefits shall be restored to a household if the household has lost benefits:

(a) Due to an administrative error; or

(b) By an administrative disqualification for an IPV that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from the date:

(a) The agency receives a request for restoration; or

(b) A final order is implemented, if no request for restoration is received.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claim that the household has.

Section 11. Disclosure of Information. The disclosure or use of information regarding Food Stamp Program participants shall be restricted to an individual[  
~~(1) Directly connected with the administration or enforcement of:~~

~~(a) The Food Stamp Program;~~

~~(b) A federal assistance program; or~~

~~(c) A state program which receives federal funding and provides assistance to low-income households on a means-tested basis; or~~

~~(2)] who meets the criteria specified in 7 C.F.R. 272.1(c).~~

Section 12. Retention of Records. (1) In accordance with 7 C.F.R. 272.1(f), the cabinet shall retain program records:

(a) In an orderly fashion, for audit and review purposes; and

(b) Except for records specified in subsection (2) of this section, for a period of three (3) years from the:

1. Month of origin of each record; or

2. Date of fiscal or administrative closure for fiscal records and accountable documents, such as claims.

(2) The cabinet shall retain records on IPV disqualifications and work violations indefinitely.

Section 13. Civil Rights Compliance. In accordance with 7 C.F.R. 272.6, the cabinet shall not discriminate in any aspect of program administration on the basis of age, race, color, sex, disability, religion, political beliefs, or national origin.

Section 14. Incorporation by Reference. (1) "KCD-1, General Claims Notice, edition 4/09[6/06]", is incorporated by reference.

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2009 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 January 14, 2009, 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 February 2, 2009. 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: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for recipient claims, collection provisions, and additional provisions used by the cabinet in the administration of the Food Stamp Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for establishing and collecting claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has the responsibility under 7 C.F.R. 273.18 to develop a uniform process to establish and collect Food Stamp Program claims.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for claims, collections, and additional provisions used by the cabinet in the administration of the Food Stamp Program.

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

(a) How the amendment will change this existing administrative regulation: This amendment will revise the non-discrimination statement contained on the form KCD-1, General Claims Notice.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with the Food and Nutrition Service Office of Civil Rights.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation will implement the requirements of 7 C.F.R. 273.2 for Food Stamp Program forms.

(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 correct non-discrimination statement on the forms incorporated by reference as required by 7 C.F.R. 273.2.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Food Stamp Program applicants and participants in the Commonwealth have the potential to be affected by this administrative regulation. Currently, there are approximately 642,000 individuals in 288,000 households participating in the Food Stamp Program in Kentucky. Additionally, Kentucky has approximately 8,000 active food stamp related claims at this time.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of Food Stamp Program applicants or participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves a cost to Food Stamp Program applicants or participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Food Stamp Program applicants and participants will benefit from the amendment to this administrative regulation by having the correct non-discrimination statement on the form.

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

(a) Initially: No additional funding is initially required.

(b) On a continuing basis: No additional funding is needed on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Food Stamp Program benefits are 100% federally funded through the United States Department of Agriculture. Program administrative costs are funded 50% federal and 50% state, which have been appropriated in the enacted budget.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.18

2. State compliance standards. KRS 194A.010(2), KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.18

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

#### 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 Community Based 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. 7 C.F.R. 271.4, 7 C.F.R. 273.18, KRS 194A.010(2), KRS 194A.050(1)

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 revenue for the state or local government during the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Family Support

##### (Amendment)

#### 921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Food Stamp Program. 7 C.F.R. 273.16 requires the agency administering the Food Stamp Program to provide a hearing process for individuals accused of intentionally violating a Food Stamp Program regulation and to implement penalties and disqualifications for such violations. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) [or IPV<sub>2</sub>] has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include:

1. The issuance of a recommended order;

2. Procedures for written exceptions; and

3. The issuance of a final order.

(2) The cabinet shall retain:

(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A case record with an IPV disqualification indefinitely.

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Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

- (a) Initiate an administrative disqualification hearing; or
- (b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (~~OIG~~ [~~or OIG~~]) for investigation or referral for prosecution.
- (2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.
- (3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, ["Notice of Suspected Intentional Food Stamp Program Violation"], shall serve as the notification to a household of the:

- (a) Cabinet's suspicion that an IPV has been committed;
- (b) Amount and period of the overpayment for the suspected IPV; and
- (c) Household's right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a form FS-80, Supplement A, ["Voluntary Waiver of Administrative Disqualification Hearing"], which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3).

(4) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

- (a) By certified mail;
- (b) To the addressee only; and
- (c) With a return receipt requested.
- (5) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).
- (6) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.
- (7) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

- (a) Conduct an administrative disqualification hearing; and
- (b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 16.
- (2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:
- (a) One (1) time; and
- (b) For no more than thirty (30) days.
- (3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household representative does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:

- (a) Proceed without household representation, because the return receipt from the hearing notice verified the notice was received by the individual; or
- (b) Not be conducted, because the hearing notice or return receipt is annotated as unclaimed or undeliverable.
- (3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall conduct a new hearing if the:
- (a) Household was not represented at the hearing;
- (b) Individual was determined to have committed an IPV; and

(c) Hearing officer later determines the household had good cause, in accordance with 921 KAR 3:070, Section 8(2), for not appearing.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

- (a) IPV being substantiated by the final order or a court of appropriate jurisdiction;
- (b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or
- (c) Individual completing, signing, and returning the form FS-111, ["Deferred Adjudication Disqualification Consent Agreement"], pursuant to Section 7 of this administrative regulation.
- (2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:
- (a) Reinstate the individual, if eligible; and
- (b) In accordance with 7 C.F.R. 273.17, restore benefits:
1. That were lost as a result of the disqualification; and
2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, ["Deferred Adjudication Disqualification Consent Agreement"], in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:

- (a) Consequences of consenting to disqualification;
- (b) Disqualification; and
- (c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in the Food Stamp Program, if the individual has:

- (a) Committed an IPV, as determined by:
1. An administrative disqualification hearing; or
2. A court; or
- (b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.
- (2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).
- (3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.
- (4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.
- (5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

- (1) Further administrative appeal procedures shall not exist after an:
- (a) Administrative disqualification hearing determines that an IPV was committed; or
- (b) Individual waives the right to an administrative disqualification hearing;
- (2) A ~~cabinet~~ ~~hearing officer's~~ determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and
- (3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "FS-80, Notice of Suspected Intentional Food Stamp Program Violation", edition 4/09~~7/06~~;
- (b) "FS-80, Supplement A, Voluntary Waiver of Administrative Disqualification Hearing", edition 4/09~~7/06~~; and

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(c) "FS-111, Deferred Adjudication Disqualification Consent Agreement", edition 4/09[7/06].

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on January 21, 2009 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 January 14, 2009, 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 February 2, 2009. 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: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with 7 C.F.R. 273.16 and KRS Chapter 13B, by establishing a hearing process for individuals suspected of intentionally violating a Food Stamp Program regulatory provision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS Chapter 13B, 194A.010 (2), 194A.050 (1), 7 C.F.R. 271.4, and 273.16 by establishing the hearing process and penalties associated with intentional violations of the Food Stamp Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by developing a hearing process in compliance with KRS Chapter 13B and 7 C.F.R. 273.16 and by establishing penalties in accordance with 7 C.F.R. 273.16.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by correcting the non-discrimination statement on the forms incorporated by reference FS-80, Notice of Suspected Intentional Food Stamp Program Violation; FS-80, Supplement A, Voluntary Waiver of Administrative Disqualification Hearing; and FS-111, Deferred Adjudication Disqualification Consent Agreement.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is needed to comply with the requirements of the Food and Nutrition Service Office of Civil Rights.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning form language with that prescribed by the Food Nutrition Service Office of Civil Rights.

(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 conforming to the Food and Nutrition Service Office of Civil Rights requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Food Stamp applicants and participants are potentially affected by this administrative regulation. There are approximately 288,000 households with 642,000 household members currently participating in the Food Stamp Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of Food Stamp Program applicants or participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves a cost to Food Stamp Program applicants or participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Food Stamp Program applicants and participants will benefit from the amendment to this administrative regulation by having the correct nondiscrimination statement on the forms relating to IPV disqualifications.

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

(a) Initially: No additional funding is initially required.

(b) On a continuing basis: No additional funding is needed on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Food Stamp Program benefits are 100% federally funded through the United States Department of Agriculture. Program administrative costs are funded 50% federal and 50% state, which have been appropriated in the enacted budget.

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

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

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.2, 273.16

2. State compliance standards. KRS Chapter 13B, 194A.010 (2), 194A.050 (1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.2, 273.16

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

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 Community Based 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. 7 C.F.R. 271.4, 273.2, 273.16, KRS Chapter 13B, 194A.010 (2), 194A.050 (1)

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 revenue for the state or local government during the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Community Based Services**

**Division of Family Support**

**(Amendment)**

**921 KAR 3:090. Simplified Assistance for the Elderly Program or "SAFE".**

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4[;]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 delegates the administration of the Food Stamp Program to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program, a demonstration project administered by the cabinet to improve access to the Food Stamp Program for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular Food Stamp Program benefits" means food stamp benefits received in accordance with the procedures specified in:

(a) 921 KAR 3:020, Financial Requirements;

(b) 921 KAR 3:025, Technical Requirements;

(c) 921 KAR 3:030, Application Process; and

(d) 921 KAR 3:035 Certification Process.

(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional food stamp program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a food stamp program requirement is specified in this administrative regulation, all food stamp program requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

(1) A fair hearing;

(2) An administrative disqualification hearing;

(3) An appeal;

(4) A disqualification;

(5) A claim and collection of a claim; and

(6) EBT issuance.~~[Electronic Benefit Transfer, or "EBT", issuance.]~~

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:

(a) Is a Kentucky resident;

(b) Is:

1. A current SSI recipient; or

2. SSI eligible, but SSI benefits are currently in suspense;

(c) Is age sixty (60) or older;

(d) Is not institutionalized;

(e) Is:

1. Single, widowed, divorced, or separated; or

2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and

(f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.

(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.

(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:

(a) Shall not be eligible for SAFE; and

(b) May apply for regular Food Stamp Program benefits in accordance in 921 KAR 3:030.

(4) Meeting the criteria of subsection (1) of this section shall not prohibit an individual from applying for regular Food Stamp Program benefits instead of SAFE benefits.

(5) An individual shall not receive SAFE benefits and regular Food Stamp Program benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

(a) Identify SSI participants who are potentially eligible for SAFE; and

(b) Mail each identified SSI household a SF-1, ["Simplified Assistance for the Elderly (SAFE) Application"], and a return envelope.

(2) A SAFE application shall be considered filed if the SF-1 is:

(a) Signed; and

(b) Received at the Department for Community Based Services, Division of Family Support~~[DCBS central office, Nutrition Assistance and Accountability Branch, 3E-1, 275 East Main Street, Frankfort, Kentucky 40621.]~~

(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided



by the applicant on the SF-1 or the SF-2, [“]Simplified Assistance for the Elderly (SAFE) Recertification Form[”].

(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.

(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service.

(2) The standard SAFE benefit amounts shall be based on:

(a) Shelter costs;

(b) Household size; and

(c) The average benefits received by a similar household in the regular Food Stamp Program.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.

(2) The cabinet shall process changes in household circumstances based on information received from SDX.

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

(a) Name;

(b) Date of birth; or

(c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

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

(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", edition 4/09[3/07]; and

(b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", edition 4/09[3/07].

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2009 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 January 14, 2009, 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 February 2, 2009. 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: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Simplified Assistance for the Elderly (SAFE) Program, a demonstration project administered by the cabinet to improve access to Kentucky's Food Stamp Program for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application and recertification standards for the SAFE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the SAFE Program, a demonstration project of Kentucky's Food Stamp Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements of the SAFE Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will correct the non-discrimination statement on the incorporated forms, SF-1, Simplified Assistance for the Elderly (SAFE) Application, and the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form. The amendment also makes other technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to ensure compliance between SAFE Program forms' non-discrimination statement and language prescribed by the U.S. Department of Agriculture, Food Nutrition Service (FNS), Office of Civil Rights.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by implementing application requirements of 7 C.F.R. 273.2 as further clarified by the FNS-Office of Civil Rights.

(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 correcting the non-discrimination statements provided on the application and re-certification forms incorporated within this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 13,000 households currently receiving Food Stamp benefits through the SAFE program. All of these participants are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of SAFE program applicants or participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves a cost to SAFE applicants or participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SAFE program applicants and participants will benefit from the amendment to this administrative regulation, as it ensures clarity of (and compliance with) federal requirements through the corrections to incorporated forms' non-discrimination statements.

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

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(a) Initially: No additional funding is initially required.

(b) On a continuing basis: No additional funding is needed on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SAFE Program benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriate in the enacted budget.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 7 C.F.R. 273.2

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment does not impose a stricter standard, or additional or different responsibilities or requirements.

### 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 Community Based 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. 7 C.F.R. 271.4, 7 C.F.R. 273.2, KRS 194A.050 (1)

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 revenue for the state or local government during the first year.

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

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

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

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 2008

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Teachers' Retirement System  
(New Administrative Regulation)**

**102 KAR 1:300. Kentucky Teachers' Retirement System  
Trustees Education Program.**

RELATES TO: KRS 161.250(3)(c)

STATUTORY AUTHORITY: KRS 161.250(3)(c) and KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of Kentucky Teachers' Retirement Systems to promulgate all administrative regulations necessary or proper for the administration of the funds of the retirement system and for the transaction of business. KRS 161.250(3)(c) provides that the board shall establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference in an administrative regulation. This administrative regulation establishes the "Kentucky Teachers' Retirement System Trustees Education Program."

Section 1. Incorporation by Reference. (1) The "Kentucky Teachers' Retirement System Trustees Education Program", adopted November 17, 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: November 17, 2008

FILED WITH LRC: November 18, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2009, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 2009, 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 February 2, 2009. 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: Beau Barnes, General Counsel, Kentucky Teachers' Retirement Systems, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 848-8599.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Beau Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the "Kentucky Teachers' Retirement System Trustees Education Program."

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 161.250(3)(c) requires the Board of Trustees of Kentucky Teachers' Retirement System to establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference into an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is conforms to the content of the authorizing statutes by establishing a formal trustee education program for all trustees of the board, which shall be incorporated by reference into this administrative

regulation as required by KRS 161.250(3)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will incorporate by reference the "Kentucky Teachers' Retirement System Trustee Education Program."

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The members of the Board of Trustees of Kentucky Teachers' Retirement System.

(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 be required to comply with the "Kentucky Teachers' Retirement System Trustees Education Program."

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The members of the Board of Trustees will have mandatory education requirements concerning administration of the retirement plan.

(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 Kentucky Teachers' Retirement System are paid from the retirement trust fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There 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. The training requirements apply to all members of the Board of Trustees equally.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

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

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

fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FINANCE AND ADMINISTRATION CABINET

### Department of Revenue

#### Office of Sales and Excise Taxes

#### Division of Sales and Use Tax

#### (Repealer)

### 103 KAR 25:111. Repeal of 103 KAR 25:110.

RELATES TO: KRS 139.050, 139.320

STATUTORY AUTHORITY: KRS 13A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 139.320 was repealed by 2007 Ky. Acts Ch. 141, sec. 29, effective July 1, 2007; therefore, 103 KAR 25:110 is now obsolete. This administrative regulation acts specifically to repeal 103 KAR 25:110.

Section 1. 103 KAR 25:110, Use tax on construction machinery, is hereby repealed.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 23, 2009 at 10 a.m. in Room 149 in the Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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. Written comments shall be accepted through February 2, 2009. 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: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Dobson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation acts specifically to repeal the regulation regarding the guidelines for use tax on construction machinery.

(b) The necessity of this administrative regulation: The legislation regarding this administrative regulation has been repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This repeals unnecessary administrative regulations.

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

tion's only purpose is to repeal the regulation regarding the guidelines for use tax on construction machinery since the corresponding statute has been repealed.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: 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: A limited number of contractors, primarily based out of state, that bring heavy machinery and equipment into the state for construction jobs 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: Since repeal of KRS 139.320, use tax has not been due and affected entities no longer need to report.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reduced reporting requirements as entities will no longer need to report use tax based on KRS 139.320.

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

(a) Initially: Minimal. The deletion of forms and minimal education will be required.

(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: Part of ongoing governmental expense.

(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 established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No.

### 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? N/A

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**  
**Department of Revenue**  
**Office of Sales and Excise Taxes**  
**(New Administrative Regulation)**

**103 KAR 31:190. Alternative Fuel, Gasification, and Renewable Energy Facility Refunds on Construction Costs.**

RELATES TO: KRS 139.517

STATUTORY AUTHORITY: KRS 131.130(1), KRS 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of taxes. KRS 139.517 establishes the sales tax incentive for alternative fuel, gasification and renewable energy facilities. This administrative regulation establishes requirements for a sales and use tax refund relating to the construction, retrofit, or upgrade of an alternative fuel, gasification, or renewable energy facility.

Section 1. Definitions. (1) "Activation date" is defined in KRS 154.27-010(1).

- (2) "Alternative fuel facility" is defined by KRS 154.27-010(3).
- (3) "Approved company" is defined in KRS 154.27-010(5).
- (4) "Authority" is defined in KRS 154.27-010(6).
- (5) "Construction period" is defined in KRS 154.27-010(13).
- (6) "Eligible project" is defined in KRS 154.27-010(15).
- (7) "Facility" is defined in KRS 154.27-010(17).
- (8) "Gasification facility" is defined in KRS 154.27-010(19).
- (9) "Renewable energy facility" is defined in KRS 154.27-010(24).
- (10) "Retrofit" is defined in KRS 154.27-010(26).
- (11) "Upgrade" is defined in KRS 154.27-010(30).

Section 2. Refund Application Requirements. (1) The approved company shall file requests for refunds with the Department of Revenue annually within the sixty (60) day deadlines provided for in KRS 139.517(4) and according to the activation date requirements in KRS 154.27-070.

(2) Refund requests shall be postmarked, electronically submitted or, if delivered by messenger, hand-stamped by the department by the date required to qualify for consideration and shall include the following:

(a) Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund, Form 51A301;

(b) Information Sharing and Assignment Agreement for Designated Refund Claims, Form 51A290, which is incorporated by reference in 103 KAR 3:020. This agreement shall be completed and signed by the approved company, the subcontractor or contractor (purchaser), and the vendor as applicable;

(c) Expenditure Report for Alternative Fuel, Gasification, and Renewable Energy Facility Refunds, Form 51A302 from each purchaser detailing all tangible personal property used in the construction, retrofitting, or upgrading of an eligible project and the total corresponding Kentucky sales and use tax paid; and

(d) Sample invoices between each purchaser and vendor.

(3) Failure to file the request for a refund within the sixty (60) day deadlines shall result in the forfeiture of the refund for that year and the amount forfeited may not be subject to a refund request for any subsequent years.

Section 3. Record-keeping Requirements. The approved company shall keep adequate and complete records supporting its refund request for periods not less than four (4) years as provided

for in KRS 139.720. The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.517.

Section 4. Refund Calculation. Calculation shall be based upon purchases of tangible personal property made within the construction period that is incorporated into the facility according to the sales and use tax incentive amounts approved by the authority.

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

(a) "Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund", Form 51A301, December 2008; and

(b) "Expenditure Report for Alternative Fuel, Gasification, and Renewable Energy Facility Refunds", Form 51A302, December 2008.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on January 23, 2009 at 10 a.m. in Room 149, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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. Written comments shall be accepted through February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Richard Dobson, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does:

(a) Establishes requirements for sales and use tax refunds relating to the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility.

(b) The necessity of this administrative regulation: Informs taxpayers of the requirements they must meet to obtain a refund of sales and use tax on construction costs relating to the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides additional guidance on refund requirements for sales and use tax paid on construction materials relating to the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility.

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

(a) How the amendment will change this existing administrative regulation: Not Applicable

(b) The necessity of the amendment to this administrative regulation: Not Applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any person or persons involved in requesting a sales and use tax refund relating to the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility will be affected. Various suppliers, subcontractors, general contractors, etc. engaged in the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility, as well as the Department of Revenue administering the refund requests, are provided needed guidance.

(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 entities identified in question (3) shall look to the statutory and regulatory provisions for guidance so that annual refund claims will be filed and reviewed in a timely manner because expenditures will be tracked according to purchase date by appropriate parties with proper tax paid.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown, but any expense of the refund applicant will be more than offset by the tax refund itself.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consistency in compliance with the statutes. All entities involved in the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility are told initially what information needs to be captured as purchases occur rather than being forced to retrace transactions for tax documentation at a later date.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation beyond normal legislative implementation expenses.

(b) On a continuing basis: The Department of Revenue will seek to absorb the administrative costs of refund reviews and related taxpayer assistance with existing resources.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue 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: This administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer involved in the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility.

#### 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 of Revenue, Office of Sales and Excise Tax 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 131.130, 139.517, and 139.710.

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 specific expenditures are mandated for state or local government, and any refund claims will occur after the first year the regulation is 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 provides guidance on how agencies may recover sales and use tax paid on construction costs. Because of the timing of refund claims no new revenues will be realized in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The recovery of sales and use tax paid on the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility will vary depending upon the size of projects and the timing of construction.

(c) How much will it cost to administer this program for the first year? No additional costs beyond routine administration by the department.

(d) How much will it cost to administer this program for subsequent years? No additional costs beyond ongoing tax administration performed with existing resources.

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 regulation provides guidance on how entities may recover expenses of sales and use tax paid on construction materials relating to the construction, retrofit or upgrade of an alternative fuel, gasification or renewable energy facility.

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (New Administrative Regulation)

#### 105 KAR 1:440. Kentucky Retirement Systems Trustee Education Program.

RELATES TO: KRS 61.645(18)

STATUTORY AUTHORITY: KRS 61.645(9)(g), 61.645(18)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires 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 61.645(18) provides that the board shall establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference in an administrative regulation. This administrative regulation establishes the "Kentucky Retirement Systems Trustee Education Program."

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

(a) The "Kentucky Retirement Systems Trustee Education Program", adopted November 20, 2008.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: November 20, 2008

FILED WITH LRC: December 12, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 26, 2009, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 19, 2009, 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 January 31, 2009. 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: Jennifer A. Jones, 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: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the "Kentucky Retirement Systems Trustee Education Program."

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 61.645(18) requires the Board of Trustees of Kentucky Retirement Systems to establish a formal trustee education program for all trustees of the board, which shall be incorporated by reference into an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is conforms to the content of the authorizing statutes by establishing a formal trustee education program for all trustees of the board, which shall be incorporated by reference into this administrative regulation as required by KRS 61.645(18)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will incorporate by reference the "Kentucky Retirement Systems Trustee Education Program." If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The members of the Board of Trustees of Kentucky Retirement Systems.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will be required to comply with the "Kentucky Retirement Systems Trustee Education Program."

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The members of the Board of Trustees will be better able to administer the retirement systems.

(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 Kentucky Retirement Systems 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. The training requirements apply to all members of the Board of Trustees equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (New Administrative Regulation)

#### 201 KAR 2:310. Compounding for a practitioner's office or institutional administration.

RELATES TO KRS 315.191(1)(a).

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) requires the board to promulgate administrative regulations to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. This administrative regulation addresses compounding for use by a practitioner's office administration or institutional administration.

Section 1. Pharmacists, pharmacist interns, and pharmacy technicians may prepare a compounded drug for a practitioner's office administration or institutional administration.

Section 2. A compounded drug that contains a controlled sub-

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stance shall not be compounded for office or institutional administration.

Section 3. The pharmacist shall receive a written, verbal, facsimile, or electronic request for a compounded drug from a practitioner, indicating the formulation, strength, and quantity ordered.

Section 4. Label Requirements. (1) A label shall be generated for the compounded drug and shall include:

- (a) The name of the practitioner;
- (b) The designated name and strength of the compounded drug;
- (c) The quantity dispensed;
- (d) A lot or batch number of the compounded drug;
- (e) The beyond use date for the compounded drug;
- (f) The date the compounded drug is dispensed;
- (g) The pharmacy's name, address, and telephone number;
- (h) Any special storage requirements;
- (i) A notation stating "For Office or Institutional Administration Only-Do Not Dispense to Patient"; and
- (j) Any other information the pharmacist deems necessary.

Section 5. The compounded drug shall be administered in the practitioner's office or institution and shall not be dispensed to the patient.

Section 6. The prescription for the compounded drug shall be kept pursuant to 201 KAR 2:170.

W. MICHAEL LEAKE, President

APPROVED BY AGENCY: November 14, 2008

FILED WITH LRC: December 12, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2009 at 10 a.m. at the Board's office, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by January 20, 2009, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30p.m. Monday February 2, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows a pharmacist, pharmacist intern, or pharmacy technician prepare a compounded drug for a practitioner's office administration or institutional administration.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.191(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations that establishes the requirements for pharmacists, pharmacist interns, and pharmacy technicians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for a pharmacist, pharmacist intern, or pharmacy technician to prepare a compounded drug for a practitioner's office administration or institutional administration.

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

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

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates many pharmacists, pharmacist interns, and pharmacy technicians working in pharmacies across the state of Kentucky will be able to prepare compounded drugs for practitioner's office administration or institutional administration.

(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 pharmacists, pharmacist interns, and pharmacy technician shall follow requirements for preparing a compounded drug for a practitioner's office administration or institutional administration.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The practitioner's office or institutions will have the access to compounded drugs that can be administered to their patients.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacists, pharmacist interns, and pharmacy technicians that prepared compounded drugs for practitioner's office administration or institutional administration.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy 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 315.191(1)(a) requires or authorizes the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation gen-



erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET**  
**Kentucky State Board of Licensure for Marriage and**  
**Family Therapists**  
**(New Administrative Regulation)**

**201 KAR 32:035. Supervision of Marriage and Family Therapist Associates.**

RELATES TO: KRS 335.320 (6), 335.332

STATUTORY AUTHORITY: KRS 335.320 (4) and (5)

NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid their fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Qualifications for Board-Approved Supervisors. (1) Effective January 1, 2010, the following qualifications shall be necessary to become a board-approved supervisor:

(a) AAMFT approved supervisor in good standing; or

(b) AAMFT supervisor candidate; or

(c) A marriage and family therapist licensed in Kentucky and in good standing with a minimum of five (5) years of experience in the practice of marriage and family therapy; or

(d) A person licensed and in good standing with a minimum of five (5) years of experience as a marriage and family therapist in another state, and who meets the licensure requirements for Kentucky.

(2) In order to obtain initial board-approved supervisor status, all applicants who are not American Association of Marriage and Family Therapists (AAMFT) supervisors in good standing, shall provide proof of completion of six (6) hours of licensure board-approved continuing education courses in supervision. The courses must be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(a) This requirement shall be in addition to the fifteen (15) hours of continuing education required by 201 KAR 32:060.

(b) Said approved courses shall include, but not be limited to, Kentucky law governing the practice of marriage and family therapy, both administrative regulations and statutes, theories of supervision, ethical issues involved in supervision, supervisor responsibilities such as logs, treatment, planning and recording. Courses may be attended live or online.

(3) Board-approved supervisor annual renewal requirements.

(a) AAMFT approved supervisors shall complete one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy. Courses may be attended live or online. This requirement shall be included in the fifteen (15) hours of continuing education required by 201 KAR 32:060.

(b) Non-AAMFT approved supervisors shall complete two (2) hours of continuing education in supervision every year, to maintain board-approved supervisor status. This requirement shall be included in the fifteen (15) hours of continuing education required by 201 KAR 32:060. Said approved courses shall include, but not

be limited to, Kentucky law governing the practice of marriage and family therapy, both administrative regulations and statutes, theories of supervision, ethical issues involved in supervision, supervisor responsibilities such as logs, treatment, planning and recording. Courses may be attended live or online.

Section 2. Clinical Supervision. (1) Clinical supervision shall:

(a) Be equally distributed throughout the qualifying period. Supervision shall average at least four (4) hours per month as specified in the supervision contract;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment or training activities;

(c) Focus on raw data from the supervisee's current clinical work; and

(d) Be direct, face-to-face contact between the supervisor and supervisee. Any alternative format of direct, face-to-face clinical supervision shall receive prior approval of the board.

(2) The supervision process shall focus on:

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as set forth in the Diagnostic and Statistical Manual of Mental Disorders;

(b) Development of treatment skills appropriate to the therapeutic process;

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 3. Standards for raw data used for supervision. For purposes of this section raw data shall be defined as the use of video-taped sessions, live observation, or co-therapy with a board-approved supervisor. The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision.

Section 4. In a therapy session involving a board-approved supervisor and supervisee:

(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session; and

(2) The supervisees may receive credit for client contact hours and supervision hours.

Section 5. Documentation Requirements. (1) The board-approved supervisor and marriage and family therapist associates shall maintain a supervision log which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision hours may take place in group supervision. For purposes of this administrative regulation, individual supervision consists of one (1) or two (2) supervisees with a supervisor.

Section 6. Number of Supervisees. A board-approved supervisor shall not have more than six (6) marriage and family therapist associates under supervision at any one time. Requests to supervise marriage and family therapist associates in excess of six (6) shall be submitted to the board for approval and shall demonstrate in writing the supervisor's plan and ability to add to the current supervisory load.

Section 7. Temporary Supervision. (1) In extenuating circumstances, when a marriage and family therapist associate is without supervision, the associate may continue working up to thirty (30) calendar days under agency supervision while appropriate board-

approved supervision is sought and a new supervision contract is submitted to the board. Qualified mental health professional for purposes of this administrative regulation is defined as a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker. For purposes of this administrative regulation extenuating circumstances include, but are not limited to, death or serious illness of the board-approved supervisor, a leave of absence by the supervisor or the termination of the supervisor's employment.

(2) It shall be the responsibility of the supervisee to notify the board and supervisee of these circumstances and to submit in writing a plan for resolution of the situation when a supervision contract is terminated. The supervisor shall notify the board and supervisee within thirty (30) days in writing.

Section 8. Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapist associates under his supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics set forth in 201 KAR 32:050 and take steps to ensure that his supervisees comply with the code of ethics as well.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2009, at 3 p.m., local time, at the Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 February 2, 2009. 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: Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the supervision requirements for Marriage and Family Therapy Associates and their board approved supervisors.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide guidance to applicants who wish

to request associate status, respective to supervision requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to promulgate regulations per KRS 13A.100 and 335.320(9).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the board to grant licensure to associates and to approve supervisors.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 38 new associate applications per year, and approximately 150 active associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure will have to comply with KRS Chapter 335 and 201 KAR Chapter 32.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant for licensure as an associate shall pay \$50 for initial licensure and \$50 for renewal.

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): This regulation will allow qualified applicants who meet statutory and regulatory criteria to practice as an associate.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(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 to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not increase existing fees, nor does it implement new fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants and license holders.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts applicants for associate status, or associates who renew their licenses.

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

regulation. KRS Chapter 335 and 201 KAR Chapter 32.

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 additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See answer above.

(c) How much will it cost to administer this program for the first year? The board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

(d) How much will it cost to administer this program for subsequent years? The board carries out its statutory duties utilizing the fees paid by the certificate holders. No state monies are appropriated.

**GENERAL GOVERNMENT CABINET**  
**Kentucky State Board of Licensure for Marriage and**  
**Family Therapists**  
**(Repealer)**

**201 KAR 32:042. Repeal of 201 KAR 32:041.**

RELATES TO: KRS 335.307, 335.330, 335.340(2)

STATUTORY AUTHORITY: KRS 335.320(9)

NECESSITY, FUNCTION, AND CONFORMITY: Marriage and family therapists certified prior to January 1, 1999 were grandfathered in and issued a license to practice marriage and family therapy in the Commonwealth of Kentucky. Pursuant to KRS 335.307, marriage and family therapists certified prior to January 1, 1999, were entitled to use the title "licensed marriage and family therapist" until the date of their second annual license renewal. As of that date, the affected marriage and family therapists were required to provide the board with verification of education or experience in psychopathology. 201 KAR 32:041 established the coursework requirements for psychopathology necessary to ensure compliance with the statute. The last licensee affected by this legislation would have renewed their license for the second time by January 1, 2004. Therefore, the administrative regulation on coursework in psychopathology is no longer necessary.

Section 1. 201 KAR 32:041, Coursework in psychopathology, is hereby repealed.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2009, at 3 p.m., local time, at the Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 February 2, 2009. 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: Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Barbara Rucker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 32:041 with respect to required coursework. Marriage and Family therapists certified prior to January 1, 1999 were grandfathered in and issued a license to practice. Pursuant to KRS 335.307, therapists certified prior to January 1, 1999, were entitled to use the title "licensed marriage and family therapist" until the date of their second annual license renewal. 201 KAR 32:041 established the coursework requirements for psychopathology necessary to ensure compliance with the statute. The last licensee affected by this legislation would have renewed their license for the second time by January 1, 2004. Therefore, the administrative regulation on coursework in psychopathology is no longer necessary.

(b) The necessity of this administrative regulation: See above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: See above.

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

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, no licensees or applicants are affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either 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: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to entities identified in question (3): N/A

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(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 to implement this repealer.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This repealer does not increase existing fees, nor does it implement new fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants and license holders.

#### 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? N/A

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

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? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. N/A

(d) How much will it cost to administer this program for subsequent years? The Board carries out its statutory duties utilizing the fees paid by the certificate holders. N/A

#### **GENERAL GOVERNMENT Department of Agriculture Division of Regulation and Inspection (New Administrative Regulation)**

#### **302 KAR 16:090. Rides and attractions not included in the definition of amusement ride or attraction.**

RELATES TO: KRS 247.232

STATUTORY AUTHORITY: KRS 247.232

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically mentioned in the statute that are not included in the definitions.

Section 1. Amusement ride or attraction does not include: (1) Dinner trains;

(2) Any amusement ride or attraction utilizing animals;

(3) Structures holding slides less than fifteen (15) feet above the ground at the base of the slide;

(4) Items used strictly for educational purposes as part of a structured class or program;

(5) All terrain vehicles, paddleboats, canoes, or rafts;

(6) Haunted houses;

(7) Hay rides;

(8) Corn Mazes or any other non-inflatable obstacle course;

(9) Mechanical bulls;

(10) Ski lifts, arial lifts, or aerial tramways;

(11) Bicycles or bicycle courses;

(12) Children's toys;

(13) Watercraft other than bumper boats;

(14) Swamp buggies;

(15) Ice skating facilities;

(16) Roller skating facilities;

(17) Base jumping equipment;

(18) Paintball equipment or courses;

(19) Lazy rivers;

(20) Wave pools;

(21) Trampolines not requiring an assistive device;

(22) Self or manual belayed rappelling equipment and facilities; and

(23) Privately owned, not open to the public facilities.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2009, 9 a.m. at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15th, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines amusement rides and attractions that are not included in the definition of amusement rides and attractions for regulatory purposes.

(b) The necessity of this administrative regulation: This regulation creates a list of items that are not to be included in the definition of amusement ride or attraction. Items listed in the section will not require business identification numbers or safety inspection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232 gives the Commissioner of Agriculture the authority to designate other rides and attractions that are not included in the definition of amusement ride or attraction.

(d) How will this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation further defines items that are not to be regulated by the Commonwealth. This list of items narrows the scope of the statute and the regulatory workload required of amusement ride inspectors.

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

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

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.

(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

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amusement ride businesses would be impacted above by potentially having fewer items not needing to meet the requirements of the statutes as revised.

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

(a) Initially: No cost or reduced operational costs.

(b) On a continuing basis: No cost or reduced operational costs.

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

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

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### GENERAL GOVERNMENT Department of Agriculture Division of Regulation and Inspection (New Administrative Regulation)

**302 KAR 16:100. Operate amusement ride or device defined.**

RELATES TO: KRS 247.232

STATUTORY AUTHORITY: KRS 247.232

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(4) and (5) define "operator" and "operator assistant". This administrative regulation establishes the definition of operate.

Section 1. The act of "operating an amusement ride or attraction" is defined as the loading and unloading of riders or participants, the supervision and observation of the amusement ride or attraction while in operation, and the normal starting and stopping of the amusement ride or attraction.

Section 2. The ride operator must be able to effectively communicate with ride patrons both visually and verbally.

Section 3. The following rides or attractions do not require an operator:

(1) Playports; and

(2) Inflatable devices.

Section 4. (1) The owner of an amusement ride or attraction shall be responsible for the actions of the operators of a ride or attraction.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2009, 9 a.m., at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15th, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines operating an amusement ride or attraction, and designated rides that do not require an operator.

(b) The necessity of this administrative regulation: This regulation defines operating an amusement ride or attraction. The statute places additional safety requirements on operators of rides or attractions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232 gives the Commissioner of Agriculture the authority to designate other rides and attractions that do not require an operator. This regulation helps make clear the distinction between an operator and an operator assistant by defining the operation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines rides that do not require an operator. This will make inspections by amusement ride inspectors more efficient.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.

(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 amusement ride businesses would be impacted above by potentially having fewer items not needing to meet the requirements of the statutes as revised.

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

(a) Initially: No cost or reduced operational costs.

(b) On a continuing basis: No cost or reduced operational costs.

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

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

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT Department of Agriculture Division of Regulation and Inspection (New Administrative Regulation)

#### 302 KAR 16:110. Violations, revocations and suspensions of business identification number.

RELATES TO: KRS 247.233

STATUTORY AUTHORITY: KRS 247.233

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires the department to establish a comprehensive list of violations. This administrative regulation establishes a comprehensive violation and fee schedule and the procedure for suspension or revocation of a business identification number.

Section 1. The following acts are declared to be violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16:

- (1) Operating without a current Business Identification Number;
- (2) Operating without current insurance in the required coverage amount;
- (3) Operating a ride or attraction while it is under a stop operation order;
- (4) Operator not present during operation of ride or attraction;
- (5) The use of blocking in foot switch breaker;
- (6) The use of improper material for electrical fuse;

(7) Moving equipment after a reportable incident or tampering with evidence;

(8) Ride or attraction operating too close to high voltage;

(9) Ride or attraction positioned underneath utility lines;

(10) Operator impaired;

(11) Generator grounded incorrectly;

(12) Failure to maintain the ride or attraction in good mechanical condition;

(13) Failure to repair ride or attraction according to manufacturer specifications or recommendations;

(14) Failure to properly shield power units;

(15) Failure to use appropriate replacement parts;

(16) Failure to follow safety guidelines (manufacturer specifications);

(17) Failure to notify the department of an incident requiring a report within twelve (12) hours;

(18) Failure to submit a required incident report;

(19) Admitting an intoxicated patron on an amusement ride or attraction;

(20) Admitting a patron with inappropriate footwear; and

(21) Failure to completely fill out incident report form.

Section 2. The following actions are declared to be violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16:

- (1) Failure to have operational manuals on site;
- (2) Failure to have maintenance manuals on site;
- (3) Failure to have maintenance records on site;
- (4) Fueling ride or attraction in undesignated area;
- (5) Exceeding manufacturer's speed of ride or attraction;
- (6) Failure to properly secure the ride or attraction;
- (7) Failure to have electrical disconnect within six (6) feet of operator;
- (8) Operation of a ride or attraction by a operator under eighteen (18) years of age;
- (9) Failure to use correct START/STOP switch;
- (10) Operating ride or attraction in inclement weather;
- (11) Failure to comply with proper operating procedures noted during inspection;
- (12) Failure to properly anchor inflatable device;
- (13) Failure to perform or document pre-operation inspections;
- (14) Operating without an itinerary;
- (15) Operating without the required number of operators as required by manufacturer;
- (16) Failure to have Ground Fault Circuit Interrupter (GFCI) protection where required;
- (17) Failure to properly place fencing barrier;
- (18) Failure to have fire extinguishers in correct locations;
- (19) Failure to have first aid kit on location;
- (20) Failure to have inspection sticker in appropriate location; and
- (21) Failure to have ride or attraction signage or use of incorrect signage.

Section 3. Administrative Penalties. (1) The following acts shall be assessed an administrative penalty not less than:

- (a) \$1,000 nor more than ten \$10,000: a violation of 302 KAR 16:090(1)(a) through (p);
- (b) \$100 nor more than \$5,000: a violation of 302 KAR 16:090(1)(q) through (u);
- (c) \$100 nor more than \$1,000: a violation of 302 KAR 16:090(2)(a) through (o);
- (d) \$100 nor more than \$500: a violation of 302 KAR 16:090(2)(p) through (t);
- (e) \$100 nor more than \$200: a violation of 302 KAR 16:090(2)(u).
- (2) For a second violation, which is the same as the first violation and occurring within thirty (30) days of assessment of the first violation, the administrative penalty shall be doubled up to the maximum fine amount listed.
- (3) For a third violation, which is the same as the first violation and occurring within sixty (60) days of assessment of the first violation, the administrative penalty shall be tripled up to the maximum administrative penalty amount listed.
- (4) Nothing in this section shall prohibit the commissioner from

suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 247.233.

Section 4. Business Identification Number Suspension or Revocation. (1) The department may suspend a business identification number and place stop operation orders on all rides or attractions belonging to the owner for not longer than seven (7) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any business identification number issued under KRS 247.234 if it finds that the owner or his employee has committed any of the following acts, each of which is declared to be a violation of KRS 247.232 through 247.236:

(a) Made a false or fraudulent statement to inspectors;  
(b) Knowingly violated any provision of this chapter or KRS 247.232 through 247.236; or  
(c) Failed to pay a administrative penalty or fee assessed by this chapter.

(2) The business owner shall have ten (10) days upon the receipt of the notification of a proposed suspension, revocation, or modification of a business identification number to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

(3) If a hearing is not requested as provided for in subsection (2) of this section, the department may suspend, revoke, or modify the business identification number once the ten (10) day hearing request filing period has passed.

(4) Any owner whose business identification number is revoked under the provisions of this section shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the business identification number as established by the department, not to exceed two (2) years, or if an appeal is taken from the order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2009, 9 a.m., at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15th, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a comprehensive violation and fee schedule and the procedure for suspension or revocation of a business identification number.

(b) The necessity of this administrative regulation: The penalties for violation of amusement ride and attraction statutes and regulations were eliminated when KRS 247.990 was abolished. This administrative regulation details violations and establishes civil penalties for the violations. This regulation also details the procedure of suspension and revocation of a license.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 247.233 requires the department to establish a comprehensive list of violations. This administrative regulation establishes a comprehensive violation and fee schedule and the procedure for suspension or revocation of a business identification number.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation details violations and establishes civil penalties for these violations. This regulation also details the procedure of suspension and revocation of a license. This regulation will make inspections more effective.

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

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

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.

(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: This administrative regulation details violations and establishes civil penalties for these violations. This regulation also details the procedure of suspension and revocation of a license. This regulation will only affect businesses that have violations of the statute or regulations.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

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

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

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT  
Department of Agriculture  
Division of Regulation and Inspection  
(New Administrative Regulation)**

**302 KAR 16:120. Inflatable rides or attractions.**

RELATES TO: KRS 247.236

STATUTORY AUTHORITY: KRS 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.236 requires amusement rides or attractions to be operated within factory specifications. This administrative regulation establishes requirements and suggestions for operation of inflatable rides or attractions when manufacturer specifications are not available.

Section 1. (1) Inflatable rides and attractions do not require an operator. However, the department strongly suggests at least one operator be present during the operation of an inflatable, and that manufacturer's guidelines, or if manufacturers guidelines are not available then in accordance with Section 7 of this administrative regulation.

(2) Only inflatable devices manufactured specifically for commercial use shall be used for commercial or rental purposes.

(3) Inflatable devices shall be anchored to the ground with rods or pins with at least one half inch diameter, at a minimum depth of eighteen (18) inches, and at a forty-five (45) degree angle to the ground. If pins or rods are impracticable, seventy-five (75) pounds of sandbags are to be used at each anchor point.

(4) Owners renting inflatable devices shall be responsible for setup and anchoring of the inflatable. Any violations for improper setup shall be assessed to the rental owner.

(5) Safety signage is required if not printed by the manufacturer on the inflatable. If the following information is not printed on an inflatable, the owner must provide a sign to display near the entrance of the inflatable while it is in operation with the following information, in its entirety:

(a) Remove shoes, eyeglasses and sharp objects before entering;

(b) No flips;

(c) No piling on or wrestling;

(d) Do not bounce closer than five feet from another person; and

(e) Do not bounce against the sides or near the doorway.

(6) All inflatable devices must use ground fault circuit interrupters for electrical components.

(7) Recommended guidelines for operation of inflatable devices when no manufacturer guidelines are available are as follows:

(a) Operating procedures. Operators are strongly suggested to be present at all times an inflatable is in use. Each operator should read and understand the owner/operator manual.

1. Do not operate the ride if the wind exceeds 20 mph.

2. All riders must remove their shoes.

3. Riders must remove loose or sharp objects.

4. Sort riders by size. Only riders of the same size should be allowed in the ride at the same time.

5. The rated capacity should never be exceeded. The capacity of the ride can be found in the owner's manual.

6. The operator should assist the riders when they enter the ride.

7. The operator should position himself in close proximity to the entrance of the ride.

8. While the ride is in operation, the operator should watch the rider at all times.

9. No rough housing should be tolerated.

10. The rules posted on the warning sign must strictly be enforced by the operator.

11. When the time has expired for each ride, the operator should inform the riders that the ride is over and to exit the ride in an orderly fashion.

12. The operator should assist the riders while they exit the ride.

13. The operator must remain in control of the ride at all times.

(b) Proper set-up procedures.

1. The site selected for set-up should be clear of debris and overhead obstruction.

a. Debris includes sharp objects, sticks, stones, etc.

b. If the set-up is on gravel or stone, a tarp under the inflatable is recommended.

2. Roll the inflatable out on the designated site.

3. Find the bottom edge of the inflatable where the tie downs are located and make sure it is stretched out fully.

4. Anchor the inflatable by using the proper anchoring devices and methods described in your owner's manual, or if no manual is available, then by the Department of Agriculture's minimum requirements.

5. After the ride is anchored, attach the blower(s). Make sure the blowers are securely fastened to the air inlet tubes and all zip-pers or outlet tubes are closed.

6. Before plugging in the blowers, make sure the power cord or receptacle is the proper voltage and amperage required for your application.

7. Turn on the blowers and check for proper inflation.

8. When deflating the ride, keep the ride anchored and other people away from the ride.

9. Turn off the blowers and open all outlet tubes and zippers. Remain with the ride until it is completely deflated.

10. Properly ground any electrical equipment.

(c) Daily pre-opening inspection.

1. Ensure the ride is prepared to be inflated. Check the ride and surrounding area for debris or anything that might puncture or damage the ride.

2. Check the inlet tubes to make sure the blowers are securely attached and that all zippers or outlet tubes are closed.

3.a. Check all stakes, tie downs, clips or ropes.

b. If the stakes are located away from the ride, they must be covered.

4. Check electrical cords for defects and proper connections.

5. Check the blower for proper guards and shields.

6. Make sure everyone is clear of the ride.

7. Turn on the blowers.

8. When the ride is fully inflated, check the outside of the ride for rips and tears, as well as signs of aging and cracking.

9. The inside must be checked for moisture, rips and tears, and debris.

10. Check to make sure that the warning sign is in good condition and clearly legible and visible to riders.

(d) Emergency procedures.

1. Emergencies can arise for various reasons. The following are a few examples of emergencies and how they can be handled.

a. Weather.

(i) Bad weather can arrive in the form of rain, lightning, or strong wind.

(ii) In each case you should evacuate the ride as quickly and safely as possible.

(iii) Remain calm! If you panic your guests may also panic.

(iv) Stay calm and stay focused on your job, which is to help guest exit the ride quickly, but in an orderly fashion.

c. Loss of electrical power. When a loss of power occurs, the ride will slowly start to deflate.

(i) Remain calm! You will have ample time to help the guests quickly and safely exit the inflatable.

(ii) Contact the ride owner to check the problem. Do not leave the ride unattended.

(iii) When the problem is corrected, a routine inspection should be performed by the owner before the ride is put back in service.

d. Injuries. Every incident, no matter how small, should be reported to the inflatable owner."



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11. The owner of a rental inflatable shall furnish a copy of the recommended guidelines for operation of inflatable devices, verbatim, as set forth in subsection seven (7) of this section to all persons renting an inflatable device.

**RICHEL FARMER, Commissioner of Agriculture**

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 23, 2009, 9 a.m., at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 247.236 requires amusement rides or attractions to be operated within factory specifications. This regulation establishes requirements and suggestions for operation of inflatable rides or attractions when manufacturer specifications are not available.

(b) The necessity of this administrative regulation: Inflatable rides and attractions have become a very popular and fast growing portion of the amusement industry. This regulation is necessary to promote safety and provide commercial operators and renters of inflatable devices a list of suggestions for operation in the event a manufacturer does not provide operational instructions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.236 requires amusement rides or attractions to be operated within factory specifications. This regulation establishes requirements and suggestions for operation of inflatable rides or attractions when manufacturer specifications are not available.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to inflatable users where they have not been provided such information

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

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

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number or individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.

(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: This administrative regulation details suggestion for safe operation of inflatable when guidance has not been given from the manufacturer.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

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

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

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### GENERAL GOVERNMENT Department of Agriculture Division of Regulation and Inspection (New Administrative Regulation)

#### 302 KAR 16:130. Maintenance and repair amusement ride or attractions.

RELATES TO: KRS 247.2351

STATUTORY AUTHORITY: KRS 247.2351

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.2351 requires the Department of Agriculture to establish replacement part guidelines for amusement rides and attractions. This administrative regulation establishes those guidelines.

Section 1. All amusement rides and amusement attractions shall be maintained in good electrical and mechanical condition. The owner of an amusement ride or attraction shall follow the manufacturer's guidelines and recommendations for all maintenance procedures.

Section 2. Replacement parts. (1) Amusement rides and attractions shall use manufacturer replacement parts, or replacement parts approved by the manufacturer, if available.

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(2) If an amusement ride or attraction manufacturer is no longer in business or the manufacturer's parts are no longer available, replacement parts must meet the manufacturers original equipment specifications.

(3) If an amusement ride or attraction is unique or hand-made, the owner is deemed to be the manufacturer.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: December 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2009, 9 a.m., at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 15th, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The 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 February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes establish replacement part guidelines for amusement rides and attractions guidelines.

(b) The necessity of this administrative regulation: KRS 247.2351 requires the Department of Agriculture to establish replacement part guidelines for amusement rides and attractions. This administrative regulation establishes those guidelines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.2351 requires the Department of Agriculture to establish replacement part guidelines for amusement rides and attractions. This administrative regulation establishes those guidelines.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for maintenance and repairs of amusement rides and attractions. This regulation will make inspections more effective.

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

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

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number or individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.

(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: This administrative regulation amendment will impact amusement businesses as it specifies sources of replacement parts.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

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

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

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

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### PUBLIC PROTECTION CABINET

Department of Insurance

Consumer Protection and Education Division  
(New Administrative Regulation)

#### 806 KAR 2:088. Verification of Risk Location Systems.

RELATES TO: KRS 91A.0804, 91A.0806, 304.2-100, 304.2-310, 304.3, 304.10-030, 304.10-160

STATUTORY AUTHORITY: KRS 91A.0806(1), EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 91A.0806(1) requires the Office of Insurance to establish criteria for the verification of risk location systems and programs. This administrative regulation establishes the risk location verification criteria, sets forth the process to obtain and renew verification, and sets forth the process for revocation of verification. This administrative regulation also establishes the process for an insurer with limited risks to request an order allowing an alternative form of risk location.

Section 1. Definitions. (1) "Broker" is defined in KRS 304.10-030.

(2) "Department" means the Department of Insurance.

(3) "Insurance company" means an entity holding a certificate

of authority in accordance with KRS 304, Subtitle 3.

(4) "Risk location system or program" is defined in KRS 91A.0802(2).

(5) "Verified entity" means a vendor, insurance company or surplus lines broker that has received an order of verification from the Department of Insurance.

(6) "Verified risk location system" means a risk location system or program that is the subject of an effective order of verification issued by the department that has not expired or otherwise been revoked.

Section 2. Application for Verification. (1) A vendor, insurance company, or broker seeking verification of a risk location system or program shall submit:

(a) A complete Application for Verification of Risk Location System or Program;

(b) An application fee in accordance with KRS 91A.0806(2);

(c) A complete copy of the risk location address data set provided in accordance with the Verification Data Manual;

(d) A written explanation of how the risk location system or program is updated and the frequency with which the system or program is updated; and

(e) A written certification that the risk location system or program uses the municipal and county boundary data available from the Commonwealth Office of Technology that is based upon municipal and other filings with the Secretary of State as its sole source of boundary data.

(2) Upon receipt of the information required in subsection (1) of this section, the department shall:

(a) Review the application and documents submitted;

(b) Test the accuracy of the risk location system or program's address data set by identifying a random sampling of address data to determine if the data accurately falls within or outside of a Kentucky taxing entity; and

(c) Issue a preliminary report to the applicant of the results of the test.

(3) Within twenty (20) days from the date of issuance of the preliminary report, the applicant shall:

(a) Review the preliminary report;

(b) Provide the department with a written response to a contested finding; and

(c) Provide the department with documentation to support the response to a contested finding.

(4) The department shall issue a final report of the results of the test within:

(a) Thirty (30) days from the date of receipt of a written response from the applicant; or

(b) Thirty (30) days from the date of issuance of the preliminary report if a response is not received in accordance with subsection (3) of this section.

(5)(a) The department shall issue an order verifying the risk location software or program if:

1. The results of the test demonstrate that the risk location system or program achieved an overall level of accuracy of at least ninety percent (90%) in identifying the city or county within which an address is located; and

2. The risk location system or program is updated at least quarterly with regard to changes in municipal and county boundary data, street addresses and zip codes.

(b) The order shall expire automatically three (3) years from its effective date unless otherwise revoked.

Section 3. Continuation of Verification. A verified entity seeking to continue an order of verification of a risk location system or program shall, at least six (6) months prior to the date the order of verification is scheduled to expire, submit an application and comply with the application process set forth in Section 2 of this administrative regulation.

Section 4. Alternative Option for Insurers and Brokers with Limited Risk Locations. (1) An insurance company or surplus lines broker seeking an order from the commissioner allowing for an alternative means of determining risk location pursuant to KRS 91A.0806 shall submit the following to the department:

(a) Documentation demonstrating that the insurance company or surplus lines broker has 200 or less risk locations in Kentucky;

(b) A written explanation of the method that will be used to determine risk location; and

(c) A risk location address data set including:

1. Street number;

2. Street name;

3. City;

4. State;

5. Zip code;

6. Notation indicating if the address is inside or outside of an incorporated city boundary; and

7. If inside an incorporated city boundary, identification of the taxing entity.

(2) Upon receipt of the information required in subsection (1) of this section, the department shall:

(a) Review the information provided; and

(b) Test the accuracy of the risk location address data set by identifying a random sampling of address data to determine if the data accurately falls within or outside of a Kentucky taxing entity.

(3) The department shall issue an order permitting the use of an alternative method of determining risk location if the results of the review determine:

(a) The insurance company or surplus lines broker has a limited number of risk locations, not exceeding 200 in Kentucky; and

(b) The method of determining risk location will achieve an overall level of accuracy of at least ninety (90) percent in identifying the city or county within which an address is located.

(4) The order issued pursuant to subsection (3) of this section shall expire automatically three (3) years from its effective date unless otherwise revoked.

(5)(a) On or before January 31 of each year, an insurance company or surplus lines broker that has been issued an order pursuant to subsection (3) of this section, shall certify to the department that it has 200 or less risk locations in Kentucky.

(b) Notwithstanding subsection (4) of this section, an order issued pursuant to subsection (3) of this section shall be revoked if:

1. An insurance company or surplus lines broker fails to certify that it has 200 or less risk locations in Kentucky in accordance with paragraph (a) of this subsection; or

2. An insurance company or surplus lines broker has more than 200 risk locations in Kentucky.

Section 5. Revocation of Order of Verification or Order of Alternative Risk Methodology. (1) If the department has reason to believe after an investigation pursuant to 304.2-100, audit or investigation under KRS 91A.0804, examination of an insurer through 304.2-310 or examination of a surplus lines broker pursuant to 304.10-160, that a verified risk location system or program no longer meets the requirements for verification set forth in Section 2(5) of this administrative regulation, the department shall request that the verified entity, insurance company or surplus lines broker provide a risk location address data set as set forth in Section 2(1)(c) within thirty (30) days of the request.

(2) If the department has reason to believe after an investigation pursuant to 304.2-100, audit or investigation under KRS 91A.0804, examination of an insurer through 304.2-310 or examination of a surplus lines broker pursuant to 304.10-160, that an insurance company or surplus lines broker no longer meets the requirements for an alternative risk methodology set forth in Section 4 of this administrative regulation, the department shall request that the insurance company or surplus lines broker provide a risk location address data set as set forth in Section 4(1)(c) within thirty (30) days of the request.

(3) Upon receipt of a risk location address data set in accordance with subsections (1) and (2) of this section, the department shall test the accuracy of the data received to determine the accuracy in identifying the city or county within which an address is located. If the test results demonstrate an overall level of accuracy of less than ninety (90) percent, the department shall issue a notice of deficiency to the verified entity.

(4) (a) Within ten (10) days from the date of the notice of deficiency, the verified entity shall provide the department with the names and addresses of all insurance companies and surplus lines

brokers in Kentucky utilizing the verified risk location system.

(b) The department shall provide a copy of the notice of deficiency to all insurance companies and surplus lines brokers identified by the verified entity in accordance with paragraph (a) of this subsection.

(5) A verified entity, insurance company or surplus lines broker shall have sixty (60) days from the date of a notice of deficiency to:

(a) Correct the deficiency; and

(b) Submit a risk location address data set to the department demonstrating that the deficiency has been corrected.

(6) The department shall issue an order revoking its order of verification if:

(a) The verified entity, insurance company or surplus lines broker fails to provide the information requested in accordance with subsection (1) of this section; or

(b) The verified entity, insurance company or surplus lines broker fails to demonstrate that the deficiency has been corrected in accordance with subsection (5) of this section.

Section 6. Listing of Verified Risk Location Systems. The department shall post a listing of verified risk location systems on its Web site. The listing shall include: (1) The name of the verified risk location system;

(2) The effective date of the order of verification;

(3) The expiration date of the order of verification; and

(4) The date the order of verification was revoked, if applicable.

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

(a) "Application for Verification of Risk Location System or Program", 10/2008; and

(b) "Verification Data Manual", 10/2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's internet Web site at: <http://insurance.ky.gov>

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 12, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2009 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 2009 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the risk location verification criteria, sets forth the process to obtain and renew verification, and sets forth the process for revocation of verification. This administrative regulation also establishes the process for an insurer with limited risks to request an order allowing an alternative form of risk location.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions KRS 91A.0806, which requires the Department to establish, through administrative regulation, the criteria for verification of risk location systems and programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 91A.0806(1) requires the Department of Insurance to establish the criteria for verification of risk location systems and programs. This administrative regulation establishes that criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set forth the procedures for vendors, insurance companies and surplus lines brokers to apply for verification of a risk location system, renew that verification, and, if necessary, the process for revoking verification of a risk location system. This administrative regulation also establishes the process for an insurance company or surplus lines broker with limited risks to request the Department to approve an alternative method of risk location.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,409 insurance companies that hold a certificate of authority in Kentucky and the approximately 1,147 surplus lines brokers that are licensed in Kentucky and are subject to local government taxes. This regulation will also impact an unknown number of vendors who seek verification of their risk location system or program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities seeking verification or renewed verification of a risk location system will be required to submit an application, pay an application fee, and provide specific data to test the accuracy of the system or program. Entities seeking approval of an alternative risk location method will be required to submit documentation that they have a limited number of risks and an explanation of the method they are proposing. They will also be required to certify that information on an annual basis. Verified entities whose verified risk location system has been determined to be deficient will be required to correct the deficiency within specific timeframes and provide specific documentation to the Department to document that the deficiency has been corrected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The application fee for verification is \$2,500, which is set forth in KRS 91A.0806(2).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, vendors, insurance companies and surplus lines brokers can obtain verification of risk location systems or programs. Insurers and surplus lines brokers that utilize a verified risk location system in conjunction with other steps to identify and remit taxes to the proper taxing jurisdiction are exempt from specific penalties by the Department of Insurance.

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

(a) Initially: The cost will be \$60,000, including the annual salary for a new information technology employee.

(b) On a continuing basis: The cost will be \$61,000, including continuing salary costs.

(6) What is the source of funding to be used for the implemen-

tation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation. Additionally, KRS 91A.0806 sets forth a \$2,500 application fee to fund the verification process, and KRS 91A.0812 includes an assessment on insurance companies and surplus lines brokers to fund the administrative costs of implementation of HB 524.

(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 Department did anticipate an increase in funding would be necessary during the legislative process. An application fee and an assessment on insurance companies and surplus lines brokers were both included in the legislation to address the fiscal impact.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not set forth any specific fees. Rather, the fee for this verification is set forth in KRS 91A.0806 and is \$2,500 per vendor, insurance company or surplus lines broker that applies for verification of a risk location system or program.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all vendors, insurance companies and surplus lines brokers applying for an order of verification of a risk location system or an order approving an alternative risk location method.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 91A.0806

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? The application fees are expected to generate approximately \$15,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should initially cost \$60,000, including the annual salary for a new information technology employee.

(d) How much will it cost to administer this program for subsequent years? This regulation should cost \$61,000, including continuing salary 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:

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

#### Division of Health Insurance Policy and Managed Care (New Administrative Regulation)

#### 806 KAR 17:083. Kentucky long-term care partnership insurance program.

RELATES TO: KRS 205.619, 304.14-120, 304.14-600–304.14-644, 42 U.S.C. sec. 1396p(b), 73 C.F.R. 30030, 51302

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-642(5), 304.14-644(2), EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-642(5) requires the Office of Insurance to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Insurance Program and to establish the manner and content of a disclosure, in coordination with the Cabinet for Health and Family Services. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation defines terms and establishes requirements for long-term care partnership insurance, including a life insurance policy with a long-term care partnership insurance rider, notice, disclosure, policy exchange, training of an agent, reciprocity of a long-term care partnership insurance policy, and reporting long-term care benefits under a long-term care partnership insurance policy.

Section 1. Definitions. (1) "Agent" is defined by KRS 304.9-020(1).

(2) "Asset disregard" is defined by KRS 304.14-640(1).

(3) "Commissioner" means the Commissioner of Insurance.

(4) "Department" means the Department of Insurance.

(5) "Eligible policyholder" means a policyholder of a long-term care insurance policy, which:

(a) Was issued by the insurer on or after:

1. January 16, 2003, for a policyholder in the individual market;

or

2. July 16, 2003, for a policyholder in the group market; and

(b) Meets the requirements of long-term care partnership insurance as established in:

1. KRS 304.14-642(2)(a) through (c); and

2. Section 2(2)(d) of this administrative regulation.

(6) "Federally tax-qualified" is defined by 806 KAR 17:081, Section 1(27).

(7) "Kentucky Long-Term Care Partnership Insurance Program" or "Partnership Insurance Program" is defined by KRS 304.14-640(2).

(8) "Long-term care insurance" is defined by KRS 304.14-600(2).

(9) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).

(10) "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. secs. 1396 et seq., as amended.

(11) "Partnership exchange" means an exchange between an insurer and the insurer's eligible policyholder of an existing long-term care insurance policy, certificate, or rider for a long-term care partnership insurance policy, certificate, rider, or endorsement with substantially similar benefits.

Section 2. Long-Term Care Partnership Insurance Policy and Disclosure. (1) An insurer selling, issuing, or renewing a long-term care partnership insurance policy or certificate in Kentucky on or after the effective date of this administrative regulation shall obtain approval of a related form and premium rate from the commissioner pursuant to KRS 304.14-120, 806 KAR 14:005, and 806 KAR 14:007, as applicable.

(2) A long-term care partnership insurance policy, certificate, or rider shall:

(a) Meet requirements as established in:

1. KRS 304.14-600 through 304.14-644;

2. 806 KAR 17:081; and

3. This administrative regulation;

(b) Be clearly identified as Kentucky long-term care partnership insurance, in not less than twelve (12) point type, on the first page of a long-term care partnership insurance policy, certificate, or rider;

(c) Be delivered with a disclosure, which shall:

1. Explain the benefits of a long-term care partnership insurance policy or certificate, including:

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a. Asset disregard under the Kentucky Medicaid Program;  
b. Status as a federally tax-qualified long-term care insurance contract; and  
c. Inflation protection as identified in paragraph (2)(d) of this section;

2. State that purchasing long-term care partnership insurance does not guarantee eligibility for Medicaid; and

3. Inform the insured that:

a. A modification of a partnership insurance program policy, certificate, or rider may affect whether the:

i. Policy, certificate, or rider continues to be a partnership insurance program policy; and

ii. Insured continues to be eligible for asset disregard; and

b. If the insured moves to a state outside Kentucky which has entered into a reciprocity agreement pursuant to 73 FR 51302, the policyholder may be eligible for asset disregard in that state;

(d) Include for an individual, who has:

1. Not attained age sixty-one (61) years of age as of the date of purchase of the policy, an automatic annual inflation increase at a rate not less than three (3) percent calculated on a compound basis;

2. Attained age sixty-one (61) to seventy-six (76) as of the date of purchase, an automatic annual inflation increase at a rate not less than three (3) percent calculated on a simple basis; or

3. Attained age seventy-six (76) as of the date of purchase, an offer of inflation protection in accordance with 806 KAR 17:081, Section 10; and

(e) Not be issued in Kentucky prior to the effective date of this administrative regulation.

(3) For the disclosure identified in subsection(2)(c) of this section, an insurer shall use:

(a) The LTCPIP-1; or

(b) A disclosure developed by the insurer, which shall:

1. Meet the requirements of subsection 2(c) of this section;

2. Be entitled "Important Information About Your Kentucky Long-Term Care Partnership Insurance"; and

3. Be filed with and approved by the commissioner prior to use.

Section 3. Partnership Insurance Program Notice. (1) For a prospective applicant, an insurer, which offers a long-term care partnership insurance policy, certificate, or rider, shall provide a partnership insurance program notice pursuant to KRS 304.14-644, which shall:

(a) Be available electronically and in writing;

(b) Meet with the standards for readability and intelligibility pursuant to 806 KAR 14:121;

(c) Include the following:

1. A description of:

a. The Kentucky Long-Term Care Partnership Insurance Program;

b. Long-term care insurance and services provided under a long-term care insurance policy and certificate; and

c. The Kentucky Medicaid Program, including eligibility for Medicaid benefits; and

2. Information regarding:

a. Asset disregard;

b. A federally tax-qualified long-term care insurance contract;

c. Inflation protection as identified in Section 2(2)(d) of this administrative regulation; and

d. The impact on an insured's eligibility for asset disregard under a state Medicaid program if an insured moves to a state outside Kentucky; and

(d) Include additional resource information, including the telephone number of:

1. A contact person of the insurer, who is knowledgeable of long-term care partnership insurance;

2. The Kentucky Department of Insurance; and

3. The Kentucky Department for Medicaid Services.

(2) For the partnership insurance program notice, an insurer shall use:

(a) The LTCPIP-2; or

(b) A partnership insurance program notice developed by the insurer, which shall:

1. Meet the requirements of subsection (1) of this section;

2. Be entitled "The Kentucky Long-Term Care Partnership Insurance Program Notice"; and

3. Be filed with and approved by the commissioner prior to use.

Section 4. Agent Training. An insurer offering long-term care partnership insurance shall:

(1) Require an agent prior to selling, soliciting, or negotiating a long-term care partnership insurance policy or certificate to:

(a) Demonstrate an understanding of long-term care partnership insurance as required under KRS 304.14-642(4); and

(b) Receive training in accordance with 806 KAR 9:220, Section 5(1); and

(2) Maintain a record which supports compliance with the training requirements for an agent who sells, solicits, or negotiates long-term care partnership insurance, which shall be available:

(a) To the department, if requested; and

(b) For a period not less than five (5) years.

Section 5. Partnership Exchange of a Policy. (1) Within one (1) year of the date that an insurer begins to market long-term care partnership insurance in Kentucky, the insurer shall offer, in writing, the option for a partnership exchange to an eligible policyholder.

(2)(a) An insurer shall complete a partnership exchange by issuing a:

1. New long-term care partnership insurance policy or certificate, or rider attached to a life insurance policy; or

2. Rider or endorsement to an existing long-term care insurance policy or certificate, which shall:

a. Be approved by the department as long-term care partnership insurance;

b. Include a new effective date of coverage; and

c. Amend the first page of the policy or certificate in accordance with Section 2(2)(b) of this administrative regulation.

(b) In completing a partnership exchange pursuant to subsection (2)(a) of this section, the:

1. Insurer shall not perform underwriting associated with the policy, certificate, rider, or endorsement;

2. Premium rate charged for the policy, certificate, rider, or endorsement shall be determined using the original issue age and risk class of the insured, which were used to determine the premium rate of the existing policy, certificate, or rider; and

3. Insurer shall ensure that rights, benefits, and built-up value, which accrued under the original policy, are maintained, including credit for satisfying a:

a. Pre-existing condition exclusion period;

b. Elimination period; or

c. Incontestability period.

(c) A policy, certificate, rider, or endorsement issued pursuant to this section shall not be reported as replacement as identified in 806 KAR 17:081, Section 12.

(3) An insurer shall:

(a) Offer a partnership exchange on a nondiscriminatory basis regardless of the age or health status of the policyholder or certificate holder;

(b) Allow the policyholder to elect an offer of partnership exchange not less than ninety (90) days from the date of mailing of the notice as identified in paragraph (c) of this subsection;

(c) Provide in the notice of an offer of partnership exchange:

1. A description of the effect on the insured's premium;

2. Identifying information relating to the insurer, insured, and policy;

3. Information regarding the requirements of a partnership insurance program policy;

4. A statement that the insured shall not:

a. Forfeit any rights, benefits, or built-up value, which accrued under the original policy pursuant to subsection (2)(b) of this section; and

b. Be guaranteed eligibility for Medicaid benefits;

5. Information required by Section 3(1)(c)2 of this administrative regulation;

6. Insurer contact information; and

7. Instructions for accepting the offer of exchange.

(4) For a notice as identified in subsection(3)(c) of this section, an insurer shall use:

- (a) The LTCPIP-3; or
- (b) A notice developed by the insurer, which shall:

1. Meet the requirements identified in subsection (3)(c) of this section;
2. Be entitled "Important Notice of Offer to Exchange"; and
3. Be filed with and approved by the commissioner prior to use.

Section 6. Insurer Reporting Requirements. An insurer offering life and health insurance in Kentucky, which participates in the Kentucky Long-term Care Partnership Program, shall:

(1) Collect and report data relating to long-term care partnership insurance to the Secretary of the U.S. Department for Health and Human Services:

- (a) Pursuant to KRS 304.14-642(6); and
  - (b) In accordance with the state long-term care partnership insurance reporting requirements as established by 73 C.F.R. 30030; and
- (2) If a statement of benefits paid under a long-term care partnership insurance policy, certificate, or rider is requested by an insured or authorized representative of an insured, provide a completed LTCPIP-4, to the insured or authorized representative, within fifteen (15) days of the request.

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

- (a) "Important Information About Your Kentucky Long-Term Care Partnership Insurance, LTCPIP-1", 12/2008;
- (b) "The Kentucky Long-Term Care Partnership Insurance Program Notice, LTCPIP-2", 12/2008;
- (c) "Important Notice of Offer to Exchange, LTCPIP-3", 12/2008; and
- (d) "Long-Term Care Partnership Insurance Program Statement of Benefits Paid, LTCPIP-4", 12/2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department's Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner  
ROBERT D. VANCE, Secretary

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 27, 2009, at 9 a.m. (EST) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 20, 2009, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2009. 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:** Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street; P.O. Box 517; Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms and establishes requirements for long-term care partnership insurance, including a life insurance policy with a long-term care partnership insurance rider, notice, disclosure, policy exchange, training of an agent, reciprocity of a

long-term care partnership insurance policy, and reporting long-term care benefits under a long-term care partnership insurance policy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the Kentucky Long-term Care Partnership Insurance Program, as established in KRS 304.14-640-304.14-644 and to conform to the requirements of 26 U.S.C. 7702B(b) (Internal Revenue Code of 1986) and 42 U.S.C.A. 1396p (Deficit Reduction Act of 2005).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.14-642 establishes the Kentucky Long-term Care Partnership Insurance Program and requires the Office (Department) of Insurance to promulgate regulations to implement this program. KRS 304.14-644(2) requires the Office (Department) to establish the manner and content of a Partnership Program Notice to prospective applicant through promulgation of administrative regulations in coordination with the Cabinet for Health and Family Services. This administrative regulation defines terms and establishes requirements for long-term care partnership insurance, including a life insurance policy with a long-term care partnership insurance rider, notice, disclosure, policy exchange, training of an agent, reciprocity of a long-term care partnership insurance policy, and reporting long-term care benefits under a long-term care partnership insurance policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the requirements for offering long-term care partnership insurance.

(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 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: This regulation will affect approximately thirty (30) insurers that offer long-term care insurance, consumers purchasing long-term care insurance after 2002, and the Kentucky Department for Medicaid Services (DMS).

(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: Insurers offering long-term care insurance will be required to file new or amended policies, certificates, or riders in order to offer long-term care partnership insurance. Consumers holding current long-term care insurance may be eligible to exchange their existing policy for long-term care partnership insurance. The DMS may realize savings as a result of individuals purchasing long-term care partnership insurance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A draft of this regulation and request for estimates of cost to implement the regulation were sent to affected entities for comment; no responses relating to costs were received. DOI anticipates that the costs associated with this regulation will be minimal. The DMS may incur costs associated with training insurance agents regarding Medicaid eligibility; however, these costs were not available to DOI.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that insurers will be authorized to offer Long-term Care Partnership Insurance in accordance with KRS 304.14-640 through 304.14-

644; Consumers who purchase long-term care partnership insurance and apply for Medicaid may protect some of their assets from estate recovery; and DMS may reduce its overall expenditures for long-term care.

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

(a) Initially: DOI does not anticipate significant direct or indirect costs to initially implement this administrative regulation; existing staff will review and approve these forms.

(b) On a continuing basis: DOI does not anticipate any direct or indirect costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the DOI.

(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: DOI does not anticipate that the implementation of this administrative regulation will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation will apply equally to all Kentucky licensed insurers offering long-term care insurance in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance is promulgating this administrative regulation to implement the Kentucky Long-term Care Partnership Insurance Program. This administrative regulation will not produce a significant impact to the Department of Insurance. The Kentucky Department for Medicaid Services will be impacted by this administrative regulation; however, the impact is not known at this time.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations. KRS 304.14-642 establishes the Kentucky Long-term Care Partnership Insurance Program and requires the Office (Department) of Insurance to promulgate regulations to implement this program. KRS 304.14-644(2) requires the Office (Department) to establish the manner and content of a Partnership Program Notice to prospective applicant through promulgation of administrative regulations in coordination with the Cabinet for Health and Family Services.

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? It is not anticipated that this administrative regulation will generate revenue for the first year for state or local governments.

(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 may generate revenue for subsequent years for state or local governments; however, there may be a reduced financial burden to DMS to provide long-term care benefits.

(c) How much will it cost to administer this program for the first year? It is anticipated that the Department of Insurance will not incur significant costs to administer this amendment to an existing administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that the Department of Insurance will not incur costs to administer this administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. 42 U.S.C. sec. 1396p(b), 73 F.R. 30030 (45 C.F.R. 144.200 – 144.214), 73 C.F.R. 51302.

2. If an insurer chooses to offer long-term care (LTC) partnership insurance, the insurer is required to offer a LTC partnership insurance policy, certificate or rider, which complies with 806 KAR 17:081 and the requirements of this administrative regulation, including:

a. I. Inflation protection of:

i. Not less than a three (3) percent compound automatic annual inflation increase for an individual who has not attained age sixty-one (61) years of age as of the date of purchase of the policy; or

ii. Not less than a three (3) percent simple automatic annual inflation increase for an individual who has attained age sixty-one (61) to seventy-six (76) as of the date of purchase of the policy; or

II. An offer of inflation protection in accordance with 806 KAR 17:081, Section 10 for an individual who has attained age seventy-six (76) as of the date of purchase;

b. Partnership insurance program and policy disclosure notices for prospective applicants, Partnership insurance policyholders, and LTC insurance policyholders who are eligible for a partnership exchange (i.e., exchange of a LTC insurance policy for a LTC Partnership insurance policy);

c. The offer of partnership exchange to eligible policyholders;

d. The collection and report of data to the:

I. Secretary of the U.S. Department of Health and Human Services; and

II. Insured, upon request.

3. a. 42 U.S.C. sec. 1396p(b) requires LTC Partnership insurance policy to:

i. Include or offer inflation protection provision as follows:

i. Include at least compound annual inflation increase for an individual who has not attained age sixty-one (61) years of age as of the date of purchase of the policy;

ii. Include some level of annual inflation increase for an individual who has attained age sixty-one (61) to seventy-six (76) as of the date of purchase of the policy; and

iii. May offer (but is not required) to provide some level inflation protection for an individual who has attained age seventy-six (76) as of the date of purchase of the policy;

II. Cover an insured who was a resident of a Partnership state when coverage first became effective under the policy;

III. To be a qualified long-term care insurance policy, as defined in 26 U.S.C. 7702B(b), which was issued on or after the effective date of the State plan amendment; and

IV. Meet specific rules of the National Association of Insurance Commissioners (NAIC) and requirements of the NAIC model regulation and model act related to LTC insurance. 73 F.R. 30030 (45 C.F.R. 144.200 – 144.214) requires insurers to report data relating to LTC Partnership insurance on a quarterly basis to the Secretary of the U.S. Department of Health and Human Services. 73 F.R. 51302 establishes Reciprocity Standards in the provision of an asset disregard in determining Medicaid eligibility and estate recovery, to a LTC Partnership insurance policyholder or certificate holder who applies for Medicaid benefits in a Partnership State which participates in the interstate reciprocity agreement.

4. This administrative regulation adheres to Federal requirements as referenced in this analysis and establishes the amount of inflation protection that an individual must be afforded in order to qualify as LTC Partnership insurance. Additionally, insurers are required to notify eligible policyholders of the option to exchange an existing LTC insurance policy for a LTC Partnership insurance



policy if state and federal requirements are met. Finally, this administrative regulation requires insurers, if requested, to provide a statement of LTC benefits paid to or on behalf of an insured, which may be presented to a state Medicaid program if the insured applies for Medicaid benefits.

5. Additional requirements of this administrative regulation, including the option for a Partnership exchange, statement of LTC benefits paid and administrative forms were developed during discussions with the insurers, Department for Medicaid Services and consumer groups. These requirements are not included and do not conflict with the Federal standards; however, the Department believes the requirements are beneficial to consumers and other stakeholders.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Guardianship**  
**(New Administrative Regulation)**

**910 KAR 2:020. Referral process for adult guardianship.**

RELATES TO: KRS 209.020(5), 210.290(3), (4), 387.500-387.990, Chapter 389A, 8 U.S.C. 1182

STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes referral requirements for adult guardianship.

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

(2) "Conservator" is defined by KRS 387.510(1).

(3) "Court" means for the purpose of this administrative regulation a court of competent jurisdiction.

(4) "Disabled" is defined by KRS 387.510(8).

(5) "Division" means the Division of Guardianship.

(6) "Fiduciary Services" means a central office branch under the Division of Guardianship.

(7) "Field Services Branch" means a central office branch under the Division of Guardianship.

(8) "Informal network of support" means:

- (a) A family member;
- (b) A friend;
- (c) A neighbor in the life of the individual needing assistance;

or

(d) Another interested person or entity.

(9) "Inquiry" means an individual or entity requesting information regarding guardianship services.

(10) "Least restrictive alternatives" means an alternative to guardianship that have been exhausted such as:

- (a) Power of attorney;
- (b) Living wills;
- (c) Advanced directives;
- (d) Case management;
- (e) Representative payee;
- (f) Curator;
- (g) Trustee;
- (h) Health care surrogate;
- (i) Ex-parte order;
- (j) Emergency protective services;
- (k) Adult protective ongoing services; or
- (l) Informal network of support.

(11) "Limited conservator" is defined by KRS 387.510(2).

(12) "Limited guardian" is defined by KRS 387.510(4).

(13) "Personal needs" means an individual's need to purchase varied goods such as:

- (a) Clothing;
- (b) Personal care items; or

(c) Social support items such as:

- 1. Telephone;
- 2. Stationery;
- 3. Books;
- 4. Snacks; or
- 5. Occasional outings.

(14) "Protective services" is defined by 209.020(5).

(15) "Provider" means a facility or entity providing services for a ward such as:

- (a) Self;
- (b) Caretaker;
- (c) Family;
- (d) Group home placement;
- (e) Hospital;
- (f) Psychiatric hospital;
- (g) Personal care home; or
- (h) Supports for Community Living facility.

(16) "Referral source" means an entity that makes an inquiry of the division for guardianship services such as:

- (a) The general public;
- (b) Adult Protective Services;
- (c) Child Protective Services;
- (d) A family member;
- (e) A medical hospital;
- (f) A jail;
- (g) A psychiatric hospital; or
- (h) Another interested person or entity.

(17) "Successor guardian" means an individual, agency, or corporation who is appointed to succeed a current guardian removed by a court.

(18) "Ward" is defined by KRS 387.510(15).

Section 2. Eligibility. The cabinet shall accept an individual for guardianship if the individual:

- (1) Is an adult;
- (2) Has a disability or partial disability as determined by a hearing pursuant to KRS 387.580 and 387.740(1);
- (3) Is a legal resident of the Commonwealth pursuant to KRS 387.520;
- (4) Is a legal United States citizen pursuant to the Immigration and Nationality Act, 8 U.S.C. 1182;
- (5) Has no available informal network of support;
- (6) Has exhausted all other restrictive alternatives;
- (7) Has no other suitable person or entity available or willing to be the individual's guardian pursuant to KRS 387.600(1); and
- (8) Is appointed by a court to be a ward of the cabinet.

Section 3. Referral, Petition, and Application for Individuals Who Are Not Adjudicated. (1) If a referral source wishes the cabinet to be guardian, conservator, limited guardian, limited conservator, or any combination thereof, the referral source shall first contact the division by phone or in writing.

(2)(a) For individuals who have not been adjudicated disabled, the division shall refer an inquiry requesting public guardianship to the Division of Protection and Permanency, Adult Protective Services (APS) to determine if there is a protective need.

(b) The division shall determine if an inquiry meets acceptance criteria for guardianship through consideration of the following:

- 1. Least restrictive alternatives to guardianship have been exhausted;
- 2. All options for informal network of support have been explored;
- 3. There is a substantiated protective need;
- 4. There is a need for protective services;
- 5. The individual appears to lack sufficient understanding or capacity to make or communicate an informed choice to:
  - a. Manage personal affairs;
  - b. Manage financial affairs; or
  - c. Carry out activities of daily living;
- 6. If another individual or entity may be willing and able to serve as guardian or why the individual or entity is unable to serve;
- 7. The degree of guardianship that is appropriate to meet the substantiated ongoing protective needs of the individual; or
- 8. The positive benefit to the individual that the appointment of

a guardian would provide.

(3) If the division determines that there is a case for guardianship, the division shall, except for an emergency case, send to the referral source the following within ten (10) working days of the determination:

(a) A current blank version of an AOC-740, Petition to Determine If Disabled, issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and

(b) A current blank version of a GFS-1, Guardianship Information Referral Form; and

(c) A cover letter instructing the referral source to complete and return the forms specified in paragraphs (a) and (b) of this subsection to the division.

(4) If the referral source completes the forms specified in subsection (3)(a) and (b) of this section, the division shall complete, sign, and notarize:

(a) An AOC-745, Application for Appointment for Fiduciary issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and

(b) The AOC-745, Petition to Determine If Disabled specified in subsection (3)(a) of this section.

(5) The division shall return the completed forms specified in subsections (3)(a), (b) and (4) of this section with a cover letter to the referral source instructing the referral source to file the documents with the court.

(6) If the division is notified of a hearing from the court, division staff shall attend the hearing to meet the respondent and gather information concerning the case.

Section 4. Guardianship Referral for Individuals Who Have Been Adjudicated. (1) Within ten (10) working days of a referral, the division shall send to the referral source:

(a) A blank AOC-795, Petition for Relief Modification or Termination, issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov);

(b) The GFS-1, Guardianship Information Referral Form; and

(c) Cover letter instructing the referral source to complete the forms specified in paragraphs (a) and (b) of this subsection.

(2) The referral source shall complete the forms listed in subsection (1)(a) and (b) of this section and return the forms to the division.

(3) The division shall review the documentation from the referral source and requests any additional information needed for the division to complete the application process.

(4) The division shall complete, sign, and notarize an AOC-745, Application for Appointment for Fiduciary issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), requesting that the cabinet be appointed to serve as successor guardian, conservator, limited guardian, limited conservator, or any combination thereof.

(5) The division shall return the forms specified in subsections (1)(a), (b) and (4) of this section with a cover letter instructing the referral source to file the forms with a court.

(6) If the division is notified of a hearing by the court, division staff may attend the hearing to meet the respondent and gather information concerning the case.

(7) The court may require division staff attending court to be sworn in as successor guardian.

Section 5. Nonacceptance for a Guardianship Referral. If the referral does not meet the eligibility requirements of Section 2 and acceptance criteria in Section 3(2)(b) of this administrative regulation, the petitioner may consult with the division for explanation and referral to other services.

Section 6. Opening a Case. (1) Upon notification of guardianship appointment and if the cabinet has no current involvement with the ward, a cabinet employee such as a nurse consultant, doctor, ombudsman, social worker, or guardianship social staff shall:

(a) Contact the ward or provider; and

(b) Assess the ward's needs within two (2) working days of an emergency guardianship appointment.

(2)(a) Once the cabinet is appointed as guardian of a ward, the

division shall review the Administrative Office of the Court's, AOC-785, Disability Judgment, and AOC-775, Order of Appointment of Fiduciary, or any other legal document issued by the court to ensure the cabinet's authority is clear and concise.

(b) If the information is not clear and concise, the division shall ask the court for clarification following the process established by individual jurisdiction.

(3)(a) Upon notification of an emergency appointment, the division shall immediately assign a case for an emergency appointment to guardianship staff.

(b) If the appointment is not an emergency, the division shall assign the case to guardianship staff within ten (10) working days of notification from the court.

(4) If the cabinet has current involvement, the Field Services Branch shall meet the ward and assess his or her needs within:

(a) Five (5) working days for unsupervised wards for emergency appointments and current cabinet involvement; or

(b) Thirty (30) working days of case assignment for a ward in a supervised setting by:

1. Visiting the ward to assess current physical condition and needs;

2. Reviewing the ward's records at his or her place of residence; and

3. Consulting with a care provider concerning the ward's care; and

(5) Within thirty (30) working days of appointment, the division shall:

(a) Collect and verify names, addresses, and telephone numbers of the ward's relatives and other pertinent contacts;

(b) Determine if the ward has:

1. A will;

2. A burial policy;

3. An end-of-life decision document;

4. Durable power of attorney; or

5. Another power of attorney;

(c) Obtain an original or copy of the ward's wishes if the family has knowledge of the ward's wishes;

(d) Inform the Fiduciary Services Branch of any additional financial information obtained during the assessment;

(e) Secure and provide services as necessary for the protection and well being of the ward and his or her estate;

(f) Make a decision, in consultation with the Fiduciary Services Branch, regarding benefits and financial services; and

(g) Document a face-to-face visit.

(6) The division shall:

(a) Obtain information regarding assets and liabilities, including an inventory of:

1. Personal property and copies of a deed;

2. A mortgage;

3. A note;

4. A lien and encumbrance;

5. Tax documentation including income tax information;

6. A bank statement;

7. A picture of personal belongings; and

8. A copy of a facility personal needs statement; and

(b) Forward all financial information, including blank checks from the ward's checking account, to the Fiduciary Services Branch.

(7) The division and one (1) additional cabinet employee, if available, shall complete a physical inventory of all personal and real property.

(8) At the direction of the court, the division shall determine if it is in the best interest of the ward to liquidate or surrender a life insurance policy owned by the ward.

(9) Within thirty (30) working days of court notification of the cabinet's appointment authorizing the management or disposal of the ward's assets, the division shall:

(a) Obtain a copy of the deed for any real property owned or co-owned by the ward;

(b) Obtain a copy of a mortgage or lien on the property;

(c) Determine if the ward's real property is inhabited by someone other than the ward; and

(d) Determine if there is a tenant and:

1. Contact the tenant about the cabinet's appointment;

2. Determine if there is a written lease and, if so, request a copy from the tenant;

3. Advise the tenant that a rent payment shall be made payable to CHFS and the name of the ward and mailed to the Fiduciary Services Branch at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621;

4. Advise the tenant of the cabinet's need to make a walk through inspection of the property; and

5. Complete the walk through inspection with the Field Services Branch and one (1) additional cabinet employee, if available.

(10) If the property is vacant, guardianship staff shall visit the ward's property with one (1) additional cabinet employee, to secure the ward's personal and real property.

(11)(a) Unless there is lack of a ward's financial resources, the division shall secure and maintain insurance coverage on any real property.

(b) The division shall notify the court if it is not possible to maintain insurance coverage on any real property.

(12) The division shall contact the Property Valuation Administrator in the county where the real estate is located to determine the property evaluation and to see if taxes are owed and change the address for the ward's tax statement to the appropriate Field Services Branch's office address.

(13) The division shall attach a copy of the inventory of personal property to an event in the electronic case record and file the original inventory in the ward's hard copy case record.

(14) Upon receipt of the following items, the Field Services Branch shall forward the items to the Fiduciary Services Branch by certified mail insuring any negotiable items or items of value for the estimated value as follows:

(a) Any small items of value such as jewelry or coins; and

(b) Original documents related to finances or personal assets such as:

1. A will;
2. A burial policy;
3. Stocks;
4. Bonds;
5. Insurance policy; or
6. Mineral rights ownership.

(15) The Field Services Branch shall document in the ward's case record an item to be transferred to the Fiduciary Services Branch and the disposition of each item.

(16) If a ward is not residing in the ward's home, or a tenant is not residing in the ward's home, the Field Services Branch shall contact a utility company providing services to:

(a) Change the billing address to an appropriate Field Services Branch's office address; and

(b) Request that the utility be disconnected, if appropriate.

(17) The Field Services Branch and Fiduciary Services Branch shall determine whether the property is to be maintained as rental property or to be sold and, if sold, shall follow the provisions of KRS Chapter 389A.

(18) If the ward does not have sufficient liquid assets to meet the ward's needs, the Field Services Branch shall consult with the Fiduciary Services Branch and request the ward's assets be liquidated and deposited into the ward's account.

(19) If the ward has a safety deposit box, the Field Services Branch shall:

(a) Contact the financial institution where the safety deposit box is located;

(b) Review the ward's financial resources and determine if funds are available to drill the safety deposit box if the cabinet does not have a key;

(c) Relay this information to the Fiduciary Services Branch;

(d) Attend the opening of the safety deposit box with one (1) additional cabinet employee, if available; and

(e) Inventory the box's content.

(20) If the ward does not have funds available to drill the safety box and the cabinet does not have a key, the Field Services Branch shall not pursue opening the safety deposit box.

Section 7. Confidentiality. (1) The cabinet shall ensure the confidentiality of all records and reports that directly or indirectly identify current or former wards.

(2) Prior to release of information, the cabinet shall use discretion in considering whether:

(a) Disclosure of the information is permissible under federal and state statutes, including the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. 160 to 164;

(b) The person requesting the information is an authorized representative of a federal, state, or local government agency with a legitimate interest in the ward;

(c) The person requesting the information is a representative of an agency with which the cabinet has an agreement assuring the confidentiality of all shared information and the agency has a legitimate interest in the ward;

(d) Disclosure of the information is necessary and relevant to the issue being addressed such as:

1. Application for benefits;
2. Insurance information;
3. Sale of property;
4. Taxes; or
5. Services;

(e) Disclosure of the information is approved by the ward if the case involves partial guardianship;

(f) Disclosure of the information is beneficial for the ward such as release of information to concerned family members or to a person applying to be appointed as successor guardian;

(g) There is a court order authorizing the release of information; or

(h) There is a subpoena requesting the records.

(3) If the cabinet decides that the request for information does not meet the criteria for disclosing information and the request is specific to the ward's:

(a) Guardianship file, the cabinet shall refer the person requesting information to an open records process; or

(b) Court record, the cabinet shall refer the person requesting information to the District Court having jurisdiction.

(4) General media and publication requests for wards may be made to the cabinet.

(5) The cabinet may grant permission for publication of the ward's name, photograph, or image if:

- (a) The ward grants permission;
- (b) There is no harm or detrimental effect to the ward; and
- (c) The ward is not identified as a ward of the cabinet.

(6)(a) In order to document abuse, neglect, injury, treatment, or for identification purposes, a provider shall seek permission of the cabinet for the ward's photographs.

(b) To meet these requirements, the cabinet:

1. May give consent for such photo requests; and
2. Shall ensure the requesting service provider uses photographs only at the discretion of the division.

(7)(a) Requests for a ward's participation in research projects may be made to the cabinet.

(b) The cabinet:

1. Shall not give permission for the ward's participation in any research that is experimental, is a blind study, or involves invasive or intrusive procedures;
2. Shall seek the ward's permission to participate;
3. May give permission for participation in research that consists of a ward interview if the:
  - a. Cabinet's internal review board has reviewed and approved the research project in accordance with 920 KAR 1:060; and
  - b. Ward agrees to participate; and
4. Shall ensure that any interview of a ward related to a research request terminates immediately if the ward expresses a desire not to continue participation.

Section 8. Incorporation by Reference. (1) "GFS-1, Guardianship Information Referral Form", edition 3/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 910 KAR 2:020 Referral Process for Adult Guardianship

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

DEBORAH S. ANDERSON

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at 10 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 21, 2009, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2009, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments to:

**CONTACT PERSON:** Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 564-6930, ext. 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for referring a potential ward of the cabinet who is adjudicated or not adjudicated disabled by the court.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards in which an entity can make a referral to the cabinet to be appointed limited guardian, guardian, limited conservator, or conservator for a ward.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 387.600(1) authorizes the cabinet to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance to affected entities in making a referral to the cabinet for the adult guardianship or conservatorship programs pursuant to KRS 387.600(1).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Same as (a).

(c) How the amendment conforms to the content of the authorizing statutes: Same as (a).

(d) How the amendment will assist in the effective administration of the statutes: Same as (a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Departments for Aging and Independent Living, Community Based Services; Mental Health, Developmental Disabilities and Addiction Services. There are approximately 160 supports for community living facilities, 92 family group homes; 81 personal care homes. Any relative or caretaker of a ward; hospital, or psychiatric hospital; any individual making a referral could be affected by this administrative regulation; and potential ward of the cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The departments, providers, relative or

caretaker of a ward, hospitals, or other individual specified in question (3) may refer a potential ward to the cabinet to receive services through the adult guardianship or conservatorship programs by contacting the division first either by phone or in writing. If a case for guardianship is determined, an entity shall follow the division's instructions on how to file appropriate documents with the court for a ward to be adjudicated disabled, or if already adjudicated, file documents with the court for the cabinet to be appointed to serve as successor guardian, conservator, limited guardian, limited conservator, or any combination thereof.

(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 to the providers or individuals making a referral specified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More efficient and appropriate referrals and better service delivery for a ward of the cabinet. The referral process will help filter out the individuals who do not need guardianship and also streamline the process for those that do need guardianship.

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

(a) Initially: The department currently provides services in this administrative regulation; therefore, no additional cost.

(b) On a continuing basis: The department currently provides services in this administrative regulation; therefore, no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

### 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? Departments for Aging and Independent Living, Community Based Services; Mental Health, Developmental Disabilities and Addiction Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 387.600(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state or local government with this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for the state or local government with this administrative regulation.

(c) How much will it cost to administer this program for the first year? The department currently provides services in this administrative regulation; therefore, no additional cost.

(d) How much will it cost to administer this program for subsequent years? The department currently provides services in this

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

administrative regulation; therefore, 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:

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Guardianship (New Administrative Regulation)**

#### **910 KAR 2:030. Accounting provisions for adult guardianship.**

RELATES TO: KRS 210.290(3), (4), 387.500-387.990, 42 C.F.R. 483.10

STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes accounting provisions for adult guardianship.

Section 1. Definitions. (1) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(2) "Budget" means a financial spending plan that estimates revenues and expenditures of an individual for a stated period of time by examining and analyzing available financial information.

(3) "Division" means the Division of Guardianship.

(4) "Emergency" means unexpected expenses such as:

(a) Medical needs not paid by Medicare or Medicaid;

(b) Home repair; or

(c) Transportation for a medical appointment.

(5) "Fiduciary Services Branch" means a central office branch under the Division of Guardianship.

(6) "Field Services Branch" means a central office branch under the Division of Guardianship.

(7) "Order of appointment" means a type of guardianship appointment pursuant to KRS 387.590(6).

(8) "Ordinary and necessary expenses" means those expenses that are requested by a Field Services worker to maintain a client's quality of life such as clothing, snacks, and non-medical transportation.

(9) "Personal needs" means an individual's need to purchase varied goods such as:

(a) Clothing;

(b) Personal care items; or

(c) Social support items such as:

1. Telephone;

2. Stationery;

3. Books;

4. Snacks; or

5. Occasional outings.

(10) "Personal spending accounts" is defined by 42 C.F.R. 483.10.

(11) "Provider" means a facility or entity providing services for a ward such as:

(a) Self;

(b) Caretaker;

(c) Family,

(d) Group home placement;

(e) Hospital; or

(f) Psychiatric hospital.

(12) "Ward" is defined by KRS 387.510(15).

(13) "Work allowance" means a portion of a ward's wage check sent to the ward to use for personal spending.

Section 2. Budget. (1) Within thirty (30) working days of placement, the division shall complete a budget process for a ward.

(2) The budget process shall include:

(a) The ward's monthly income and expenses;

(b) Other expenses of the ward that are on a monthly basis to calculate a monthly amount;

(c) The ward's net amount; and

(d) Transfer of the completed budget to the Fiduciary Services Branch for implementation.

Section 3. Work Allowances. The Field Services Branch shall:

(1) Complete a budget for a ward with up to sixty (60) percent of the ward's work allowance included as a monthly expenditure; and

(2) Hold forty (40) percent of the ward's earned wages in the ward's account to meet extra expenses.

Section 4. Quarterly Reports and Personal Spending Accounts.

(1)(a) On quarterly basis, 42 C.F.R. 483.10 and 907 KAR 1:145 requires an accounting report of a ward's personal needs income and expenses for Long Term Care and Supports for Community Living (SCL) providers.

(b) The division shall establish the maximum allowable balance to be held in these accounts.

(2) The division shall review the ward's account for a discrepancy and ensure:

(a) The accounting report includes all personal needs income received on behalf of the ward;

(b) Receipts are attached to the accounting report including special requests that may have been initiated by the provider such as:

1. Clothing;

2. Furniture; and

3. Electronics;

(c) All personal needs expenditures incurred for that ward are ordinary and necessary; and

(d) Balances do not exceed \$100.

(3) If no discrepancies are found, the Field Services Branch shall:

(a) Ensure balance is in compliance and appropriate backup receipts are attached to the accounting report; and

(b) Sign, date, and write "approved" on the accounting report.

(4) If a discrepancy is found, the Field Services Branch shall:

(a) Sign, date, and write disapproved on the accounting report with the reason the statement is not approved; and

(b) Contact the provider to resolve the issue.

(5) Upon completion, the Field Services Branch shall mail the review to the Fiduciary Services Branch for final review and processing.

(6) The Field Services Branch shall notify the Fiduciary Services Branch to request a refund, modify the amount, suspend, or resume the disbursement of personal needs funds for the ward as necessary.

(7) If the Field Services Branch indicates a refund is appropriate, the Fiduciary Services Branch shall generate a letter to the provider asking that any funds over \$100 be refunded to the cabinet for the ward by the end of the month.

Section 5. Negotiable Checks. (1) The Field Services Branch shall promptly forward all checks and money orders received on behalf of a ward to the Fiduciary Services Branch by certified mail.

(2) Any cash received on behalf of a ward shall be converted to a money order by the Field Services Branch and forwarded to the Fiduciary Services Branch as specified in subsection (1) of this section.

(3) Each field services office shall have and maintain a tracking system for cash and checks received on behalf of a ward.

Section 6. Personal Checking Accounts of a Ward. (1) Establishment of a checking account for a ward shall be at the direction of the court.

(2) The Field Services Branch shall ensure that the facility

where the ward resides is aware that:

(a) An individual savings or checking account shall not be established for the ward unless the account is listed in the provider's name for the benefit of the ward; and

(b) The ward shall not legally write or endorse checks from this account unless directed by the court.

Section 7. Checks Sent to a Ward as Payee. (1) The Field Services Branch shall ensure that a ward of the cabinet does not receive checks made payable directly to them unless:

(a) The court has directed that the ward may receive and endorse checks; or

(b) The order of appointment is for a limited type of appointment that does not:

1. Specify that the ward shall not execute instruments; or

2.a. Enter into a contractual relationship.

b. Both of these shall occur if a check is endorsed.

(2) Unless the ward can endorse a check through an AOC-775, Order of Appointment of Guardianship that is issued by the Administrative Office of the Court and available at [www.courts.ky.gov](http://www.courts.ky.gov), the division shall ensure that no payment requests with the ward as payee is made.

Section 8. Requests for Payments and Supporting Documentation. A ward's expenses shall be paid through a payment request system that has been developed by the Fiduciary Services Branch to meet accounting internal control best practice and reporting required by the courts.

Section 9. Medical Payments and Medical Spend Downs, Pharmacy and Health Insurance Premium Payments. (1) For a ward's expenses such as medical, medical spend down, pharmacy and health insurance premium payments, the Field Services Branch shall forward an expense statement to the Fiduciary Services Branch for review and payment.

(2) The Field Services Branch shall submit to the Fiduciary Services Branch a request for medical expenses not reimbursable or covered by insurance such as:

(a) Glasses;

(b) Diabetic shoes; or

(c) Dental services.

Section 10. Provider Payments. (1) The Field Services Branch shall:

(a) Review a provider statement received; and

(b) Ensure that the provider statement does not include inappropriate expenses such as medical, medical co-payments, pharmacy charges, or personal needs unless these expenses had been pre-approved by the Field Services Branch.

(2) After reviewing a statement for a provider payment, the Field Services Branch shall forward the statement on behalf of a ward to the Fiduciary Services Branch for review and payment.

Section 11. General Expenses. (1) General expense payments may include:

(a) Additional personal needs such as:

1. Birthday;

2. Christmas; and

3. Change in seasonal needs; and

(b) Other items such as:

1. Furniture;

2. Vacation;

3. Outing;

4. Utilities;

5. Cable television; and

6. Household item.

(2) For all general expense statements, the Field Services Branch shall analyze the request or statement to ensure:

(a) It is an expense of the ward;

(b) The expense is in the best interest of the ward; and

(c) The expense reflects what was requested by the ward through:

1. Self;

2. Case manager of the ward; or

3. The Field Services Branch.

(3)(a) Extra personal needs shall be personal needs that exceed the budgeted or regulatory personal needs such as for Personal Care in accordance with 921 KAR 2:015 and Long Term Care facilities in accordance with 907 KAR 1:655 with already being sent on a monthly basis.

(b) The Field Services Branch may request the extra personal needs specified in paragraph (a) of this subsection at any time.

(c) The Field Services Branch shall follow the procedures for requests for payment and supporting documentation in accordance with Section 8 of this administrative regulation.

(4) The Fiduciary Services Branch shall review and approve any payment request exceeding \$500 dollars or over.

(5) The Fiduciary Services Branch shall approve or disapprove a payment request based on:

(a) If funding is available; and

(b) Back-up documentation supporting the request supports ordinary and necessary expenses.

Section 12. Burial Policies and Related Issues. (1) If funds are available beyond providing for the ward's needs, the Field Services Branch shall establish preneed burial arrangements for the ward.

(2) Prior to purchasing a burial policy or making any other funeral arrangements, the Field Services Branch shall:

(a) Confirm that funds in the ward's account are available for burial by contacting Fiduciary Services;

(b) Take into consideration a ward's desires and cultural and religious views;

(c) Review a ward's records to:

1. Assess what burial policies or arrangements have previously been acquired;

2. Ensure the use of the same funeral home;

3. Determine the value of an existing policy so the total value does not exceed Medicaid and Social Security Administration (SSA) standards; and

4. Review the adequacy of the arrangements, and if the arrangements are not adequate verify with the Fiduciary Services Branch that the ward has funds available to:

a. Add to the burial policy;

b. Procure a monument or plot; or

c. Make any other necessary burial arrangements;

(d) Determine that all needs of the ward are being met and that a minimum of fifty (50) dollars in the ward's account is available for an emergency; and

(e) Review the ward's accounts to ensure bills have been paid;

(3) The Field Services Branch may discuss with the ward, relative, or other individual with knowledge of the client's wishes concerning burial arrangements.

(4) If the Field Services Branch is unable to obtain information regarding a burial preference from the ward, relative, or other individual with knowledge of the client's wishes, the Field Services Branch shall:

(a) Examine the ward's record for information pertaining to burial; and

(b) Decide the location for the burial and the funeral director who will handle the arrangements.

(5) If purchasing a burial contract, the Field Services Branch shall:

(a) Contact a funeral director to initiate the process of establishing a burial contract;

(b) Submit the contract to the Fiduciary Services Branch to ensure that the contract meets Medicaid and SSA standards;

(c) Upon receipt of a check from the Fiduciary Services Branch, forward the check and contract signed by the Field Services Branch on behalf of the ward, to the funeral home; and

(d) Send a copy of the signed and completed contract to the Fiduciary Services Branch.

(6) If a ward has lost any body part due to amputation or surgery and it is appropriate to bury this body part with the ward, arrangements shall be made by the Field Services Branch with the funeral home selected to ensure the body part is preserved for burial with the ward's body at the time of death.910 KAR 2:030 Accounting Provisions for Adult Guardianship

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

DEBORAH S. ANDERSON, Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at 10 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on January 21, 2009, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2009, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments to:

**CONTACT PERSON:** Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, Phone: 502-564-7905, Fax: 502-564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 564-6930, ext 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes accounting provisions for adult guardianship.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards to ensure a ward's financial spending plan.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 387.600(1) authorizes the cabinet to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides administration of a ward's accounting through the cabinet's adult guardianship and conservatorship programs pursuant to KRS 387.600(1).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Same as (a).

(c) How the amendment conforms to the content of the authorizing statutes: Same as (a).

(d) How the amendment will assist in the effective administration of the statutes: Same as (a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 160 Supports for Community Living providers. Any medical or pharmacy providers, any funeral home may be affected by this administrative regulation. A ward of the cabinet will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will submit an itemized statement for services to be approved and paid by the cabinet.

(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 having this administrative regulation in place, the public will have consistent information regarding the procedures ensuring a ward's needs are being met and their income and assets are being used to the ward's benefit.

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

(a) Initially: The department currently provides services in this administrative regulation therefore no additional cost.

(b) On a continuing basis: The department currently provides services in this administrative regulation therefore no additional cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

### 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? Department for Aging and Independent Living

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 387.600(1)

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 revenue.

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

(c) How much will it cost to administer this program for the first year? The department currently provides services in this administrative regulation therefore no additional cost.

(d) How much will it cost to administer this program for subsequent years? The department currently provides services in this administrative regulation therefore 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:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Guardianship (New Administrative Regulation)

#### 910 KAR 2:040. Service provisions for adult guardianship.

RELATES TO: KRS 202A, 202B, 209.990, 210.290(3), (4), 367.97527, 387.500-387.990, 389A.010, 389.015

STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes service provisions for adult guardianship.

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

(2) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(3) "Conservator" is defined by KRS 387.510(1).

(4) "Court" means for the purpose of this administrative regulation a court of competent jurisdiction.

(5) "Division" means the Division of Guardianship.

(6) "Fiduciary Services Branch" means a central office branch under the Division of Guardianship.

(7) "Field Services Branch" means a central office branch under the Division of Guardianship.

(8) "Guardian" is defined by KRS 387.510(3).

(9) "Guardian ad Litem" means a guardian appointed to represent the interests of a person with respect to a single action in litigation.

(10) "Informed consent" means a person's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.

(11) "Interested party" means an individual or agency interested in assuming duties and responsibilities on behalf of a ward.

(12) "Least restrictive alternatives" means the guardianship options that have been exhausted such as:

- (a) Power of attorney;
- (b) Living wills;
- (c) Advanced directives;
- (d) Case management;
- (e) Representative payee;
- (f) Curator;
- (g) Trustee;
- (h) Health care surrogate;
- (i) Ex-parte order;
- (j) Emergency protective services;
- (k) Adult protective ongoing services; or
- (l) Informal network of support.

(13) "Limited conservator" is defined by KRS 387.510(2).

(14) "Limited guardian" is defined by KRS 387.510(4).

(15) "Provider" means a facility or entity providing services for a ward such as:

- (a) Self;
- (b) Caretaker;
- (c) Relative;
- (d) Group home placement;
- (e) Hospital;
- (f) Psychiatric hospital;
- (g) Personal care home; or
- (h) Supports for Community Living facility.

(16) "Substituted judgment" means principle of decision-making made by the Field Services Branch which comports with the individual ward or beneficiary's known wishes expressed prior to the appointment of a guardian, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of these views remains.

(17) "Successor guardian" means an individual, agency or corporation who is appointed to succeed a current guardian removed by the court.

(18) "Quit claim deed" means a document by which an individual disclaims an interest in a piece of real property and passes that claim to another person.

(19) "Ward" is defined by KRS 387.510(15).

Section 2. Annual Court Report. (1) Within thirty (30) calendar days of the anniversary date of the guardianship appointment, the

Field Services Branch shall submit to the court an annual report on the ward's personal status.

(2) In order to complete the annual report the Field Services Branch shall:

(a) Visit the ward and use an Initial Field Visit Report to assess current physical condition and needs;

(b) Review the ward's records at his or her place of residence;

(c) Consult with the provider concerning the ward's care;

(d) Verify the names, addresses, and telephone numbers of the ward's relatives; and

(e) Verify with Fiduciary Services Branch the ward's burial arrangements in accordance with 910 KAR 2:030, Section 12.

(3) The Field Services Branch shall:

(a) Review, sign, and notarize an annual report; and

(b) Maintain a scheduling system that ensures the timely filing of annual reports in court for each guardianship ward.

Section 3. Renewal of Limited Appointments. (1) A limited guardian or limited conservator shall not be appointed for more than five (5) years pursuant to KRS 387.590(7).

(2) The Field Services Branch shall be responsible for initiating procedures for continued guardianship or conservatorship, if appropriate.

(3) To make this determination, the Field Services Branch shall review the last annual court report to determine if continued guardianship was recommended.

(4) The Field Services Branch shall secure a verified affidavit from a physician, psychiatrist, or social worker, not serving in the division, verifying the ward's petition to continue guardianship.

(5) At least sixty calendar (60) days prior to the date of the expiration of the limited guardianship, the Field Services Branch shall file with the court the following:

(a) Petition for Relief Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov);

(b) Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and

(c) A verified affidavit as specified in subsection (4) of this section.

(6) If the request for modification involves the removal of additional rights, the Field Services Branch shall request a jury trial.

(7) If required by the court, the Field Services Branch shall attend the renewal hearing and testify.

(8) Once a court order is issued, the Field Services Branch shall obtain a copy of the court documents.

Section 4. Restoration or Modification of Rights. (1) The Field Services Branch shall inform the ward of the restoration or modification of rights process.

(2) If a ward requests the restoration of his or her rights, the Field Services Branch shall assess and assist the ward's request.

(3) The Field Services Branch shall complete an assessment of the ward using the Initial Field Visit Report that includes:

(a) Community supports available to assist the ward;

(b) Less restrictive interventions that are available to the ward;

(c) Improvements in the ward's ability to manage personal or financial affairs;

(d) Risks and benefits of restoration or modification of rights; and

(e) A recommendation of what rights may be appropriately restored, including voting rights.

(4) If the assessment supports restoration or modification, the Field Services Branch shall assist the ward in preparation of the Petition for Relief Modification or Termination (AOC-795), issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), for submittal to the court.

(5) If the assessment does not support restoration or modification, the Field Services Branch shall advise the ward or other interested party after the assessment is complete that he or she may call or write the court to request restoration.

(6) If it is in the ward's best interest, the Field Services Branch shall work with the ward towards the goal of restoration or modification by developing a plan and setting attainable and measurable



goals.

(7) The Field Services Branch shall involve community partners in formulating the plan to ensure focus on comprehensive services.

(8) The Field Services Branch shall agree on a time frame for evaluating the ward's progress.

(9) If the ward has some rights restored and the cabinet's appointment is modified, the Field Services Branch shall:

(a) Obtain a copy of the cabinet's new appointment; and

(b) Email notification of the change to the Fiduciary Services Branch.

(10) If the ward's rights are restored and the cabinet no longer serves in any capacity, the Field Services Branch shall:

(a) Obtain a copy of the court order indicating restoration;

(b) Notify Fiduciary Services Branch by email of the resignation and the mailing address of the ward;

(c) Review the ward's records and hard copy file to determine if any original information or documentation should be sent to the Fiduciary Services Branch and, if so, forward the same to the Fiduciary Services Branch within ten (10) working days of the review;

(d) Inform the restored ward about procedures to apply for benefits; and

(e) Direct the restored ward to the Fiduciary Services Branch regarding additional financial questions.

Section 5. Securing Successor Guardian or Conservator. (1) The Field Services Branch shall advise or assist an interested party, if appropriate.

(2) The Field Services Branch shall discuss:

(a) With the interested party the possibility of he or she becoming guardian; and

(b) The following information with the interested party:

(a) Prior history and involvement of the interested party;

(b) Willingness of the interested party to assist the ward; and

(c) A criminal background check on the interested party with the county attorney.

(3) If the Field Services Branch determines the appointment of the interested party as successor guardian or conservator is in the best interest of the ward, the Field Services Branch shall assist the interested party with the completion and filing of:

(a) The Petition for Relief, Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and

(b) An Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), with the court.

(4) The Field Services Branch shall submit to the court a letter supporting appointment of the applicant for successor guardian or conservator.

(5) If the Field Services Branch does not agree that successor guardian or conservator appointment is in the best interest of the ward, the Field Services Branch shall:

(a) Advise the interested party that he or she may contact the court and make appropriate application; and

(b) Submit a letter to the court specifying the concerns regarding the application of appointment for successor guardian or conservator.

(6) The Field Services Branch shall be available to testify at the hearing to determine if a successor guardian or conservator shall be appointed by the court.

(7) If a successor guardian or conservator is appointed and the cabinet retains no responsibility, the Field Services Branch shall:

(a) Obtain a copy of the court order showing change in guardianship and verification that bond has been posted if surety has been ordered by the court;

(b) Notify Fiduciary Services Branch by email of the resignation;

(c) 1. Review the ward's records and hard copy file to determine if any original information or documentation should be sent to Fiduciary Services Branch for submission to the successor guardian or conservator; and

2. Forward to the Fiduciary Services Branch within ten (10) working days of the review;

(d) Inform the successor guardian or conservator about procedures to apply for benefits; and

(e) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding additional financial questions.

(8) If the successor guardian or conservator is appointed in some capacity and the cabinet retains some level of responsibility, the Field Services Branch shall:

(a) Obtain a copy of the court order showing the change in guardianship and verification that bond has been posted if surety was required by the court;

(b) Notify the Fiduciary Services Branch by email of the change in the cabinet's responsibility;

(c) Inform the successor guardian or conservator about procedures to apply for benefits related to their responsibility; and

(d) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding financial questions.

Section 6. Sale of Real of Estate. (1) If a ward of the cabinet has real property, the Field Services Branch and the Fiduciary Services Branch staff shall explore options for management of property and determine what is in the best interest of the ward.

(2) Information concerning the property valuation for tax purposes, the real estate or personal property, or offers to purchase the ward's property shall only be disclosed to the following authorized persons:

(a) Other staff employed by the cabinet's division such as:

1. Office of the Inspector General (OIG);

2. Office of Legal Services (OLS);

3. Ombudsman;

4. Adult Protective Services (APS); or

5. Child Protective Services (CPS).

(b) The insurance agent or claims representative of the insurance company that wrote the insurance policy on the property;

(c) The real estate agent and attorney with a provider agreement to manage property and legal matters for the service region; or

(d) The Guardian ad Litem appointed for the sale of the ward's property.

(3) If disposing of the ward's assets, the Field Services Branch shall make a reasonable effort to preserve the estate as designated in a ward's will or other estate planning devices executed by a ward prior to the finding of disability in accordance with KRS 387.700(1).

(4) The Field Services Branch shall review court appointment papers to ensure that the cabinet has the authority to handle real estate and personal property matters.

(5) As deemed necessary or mandatory by the court, the Field Services Branch shall secure an independent appraisal of real and personal property.

(6) The Field Services Branch shall secure an attorney to handle the sale of property pursuant to KRS 389A.010 and 389A.015.

(7)(a) The Field Services Branch shall ensure the cabinet only passes title by means of a Quit Claim Deed on behalf of the ward.

(b) A Quit Claim Deed passes only the interest held by the ward.

(c) No warranties shall be expressed in a Quit Claim Deed.

(8) The Field Services Branch shall determine if a relative or other interested party is interested in purchasing real property and, if so, offer the property appraised by a realtor to the relative or other interested party.

(9) If the division determines it is in the ward's best interest to sell real and personal property, a public forum for sale shall include a:

(a) Public auction;

(b) Dealer consignment;

(c) Yard sale, or

(d) Realtor.

(10) The Field Services Branch shall dispose of items through donation.

(11) The Field Services Branch shall seek eviction through the court if a person residing in the ward's property:

(a) Refuses to vacate the property;

(b) Is not paying rent;

(c) Is causing damage to the property; or

(d) Refuses to vacate due to sell of the property.

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(12) The Field Services Branch shall attend a closing on the ward's real property and shall sign documents such as a:

- (a) Quit Claim Deed;
- (b) Settlement Statement; or
- (c) Tax form.

Section 7. Guardianship Ongoing Service Provision. (1) The Field Services Branch:

- (a) Shall be on call twenty-four (24) hours a day; and
- (b) May have duties such as:

1. Managing assets, that may include managing or liquidating real and personal property;

2. Securing and giving consent for social services, medical services and living arrangements; or

3. Securing and granting permission for other needed support services necessary for the well-being of the ward.

(2) Pursuant to KRS 387.640(1), the cabinet as guardian shall have the general duty to assure that the personal, civil, and human rights of the ward are preserved and protected.

Section 8. Decision Making on Behalf of a Ward. (1) A decision made on behalf of a ward by the Field Services Branch shall be based on the principles of:

- (a) Informed consent;
- (b) Substituted judgment;
- (c) Best interest; or
- (d) Least restrictive alternative.

(2) The Field Services Branch shall use the following guidelines if making a decision on behalf of a ward:

- (a) The exact request of the ward;
- (b) Conditions identified necessitating action;
- (c) Identify and determine alternatives that best meets the individual needs of the ward while placing the least restrictions on the ward's:

- 1. Freedom;
- 2. Rights; and
- 3. Ability to control their own environment;

(d) Based on available information, determine whether the ward had previously stated preferences prior to the cabinet being made the ward's guardian;

- (e) Communication of decisions with the ward;
- (f) A determination of risks and benefits:

1. While balancing the ward's maximum self-determination; and

- 2. Maintaining the safety of the ward; and
- (g) Directions from the court.

(3) The Field Services Branch shall make each decision by an informed decision based on the principle of informed consent.

(4) The Field Services Branch shall not use substituted judgment if:

(a) Following the ward's wishes causes substantial harm to the ward; or

(b) The Field Services Branch is unable to establish the ward's prior wishes.

(5) The Field Services Branch shall consider the least intrusive, best interest, and least restrictive alternative course of action possible to provide for the needs of the ward.

Section 9. Visiting the Ward at the Current Residence. (1) The Field Services Branch shall visit the ward and current residence at least quarterly to:

(a) Assess the suitability of the placement and ascertain a ward's needs;

(b) Consult with facility personnel regarding the cabinet's expectations; and

- (c) Participate in the ward's care plan.

(2) If the Field Services Branch visits a facility and concerns are identified, and if the issue does not require intervention by regulatory or certifying agencies, the Field Services Branch shall:

(a) Bring it to the attention of the facility's administrator or designee; and

(b) Develop an agreement for corrective action with the facility administrator.

- (3) If the issue is a regulatory issue related to health or safety,

the Field Services Branch shall report immediately to the appropriate regulatory or certifying agency such as:

- (a) OIG;
- (b) Department for Mental Health, Developmental Disabilities and Addiction Services (DMHDDAS); or
- (c) The department.

(4) The Field Services Branch shall report known or suspected incidents of abuse, neglect, or exploitation to:

(a) The Department for Community Based Services (DCBS) office;

(b) The Division of Protection and Advocacy (DPA) if the Field Services Branch is aware the ward is a client of the DPA; or

- (c) Other appropriate state agency.

(5) The designated Field Services Branch shall complete the following duties:

- (a) Explain reporting requirements to the ward;
- (b) Explain the investigative process of abuse, neglect, or exploitation that shall ensue; and
- (c) Offer the alleged victim appropriate assistance or referral as specified in subsection (4) of this section.

Section 10. Out of State Travel. (1) If a request is made for a ward to travel out of the state of Kentucky, the Field Services Branch shall consider the following:

- (a) Risk of or prior Absence Without Leave (AWOL);
- (b) Medical issues of the ward that may require attention while out of state; and
- (c) The ward's physical ability to handle the trip.

(2) The Field Services Branch shall inform the provider of the provider's financial responsibility for any emergency medical treatment not covered by the ward's medical insurance or Kentucky Medicaid from the time the ward leaves the state of Kentucky until the ward is once again within the legal boundaries of the Commonwealth of Kentucky.

(3) The Field Services Branch shall request a signed memorandum or letter from the provider detailing the following information:

- (a) The potential for AWOL risk and if measures shall be taken to lessen the risk;
- (b) Acceptance of the involved responsibilities of the ward; and
- (c) Proposed dates of travel.

(4) If the Field Services Branch determines that the provider has been responsible and agrees travel is in the best interest of the ward, the Field Services Branch shall share all necessary emergency contact numbers with the provider and request the provider to:

- (a) Make contact upon return to the state of Kentucky; and
- (b) Carry a copy of the current court order appointing the cabinet as guardian in case of an emergency.

Section 11. Signing Documents on Behalf of a Ward or Reports to Courts. (1) The Field Services Branch shall review facility contracts to ensure a ward's rights are preserved.

(2) The division shall not sign a contract for arbitration on behalf of a ward.

(3) A division employee shall use proper signature designation as follows:

(a) If signing on behalf of a ward the wording shall be name of ward by name of cabinet guardianship employee on behalf of the cabinet as court appointed (type of appointment) for name of ward; or

(b) If signing a court document on behalf of the cabinet, the wording shall be name of guardianship employee on behalf of the Cabinet for Health and Family Services as court appointed (type of appointment) for name of ward.

- (4) A division employee shall use the term:

(a) Conservator or limited conservator if the cabinet has been appointed for the sole purpose of performing the duties of a full or limited conservatorship; or

(b) Guardian or limited guardian in all other designations or combinations thereof.

Section 12. Client Placement and Movement. (1) To ensure a ward is receiving the least restrictive and high quality services from

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the most appropriate provider, the Field Services Branch shall develop and maintain a working knowledge of:

- (a) Services;
- (b) Providers; and
- (c) Facilities in the community.

(2) The Field Services Branch shall consider various ancillary and support services and select a provider that best meets the needs of the individual ward.

(3) If the cabinet has responsibility for living arrangements of the ward, the Field Services Branch shall ensure that the ward is living in the most appropriate, least restrictive environment taking into consideration the ward's wishes and needs.

(4) A move to a new environment, including an intensive care facility for mental retardation, nursing facility, or psychiatric hospital, may only be made after the Field Services Branch:

(a) Evaluates physical and mental health needs by reviewing recommendations of treating professionals; and

(b) Determines care options.

(5) The Field Services Branch shall, upon the move to a new environment:

(a) Attend an initial care plan meeting; and

(b) Visit the ward:

- 1. Within thirty (30) days of the move; and
- 2. Follow-up within ninety (90) days of the move.

(6) The Field Services Branch shall consider:

(a) Any involuntary or long-term institutional placement of a ward to:

- 1. Minimize the risk of substantial harm to the ward; and
- 2. Obtain the most appropriate care; and

(b) The ward benefits and entitlements driven by level of care in the placement.

(7) The Field Services Branch shall notify the facility where the ward resides if the ward has been convicted of or is listed on the sexual offender registry.

Section 13. Supports for Community Living (SCL). (1) Unless a ward has been previously referred, the Field Services Branch shall refer a ward with a mental retardation or developmental disability to DMHDDAS for determination of SCL services in accordance with 907 KAR 1:145.

(2) The division shall monitor and access care in which a ward receives through SCL services.

Section 14. Bed Holds. (1) If the Field Services Branch receives notification that a ward is leaving a Medicaid nursing level of care or Medicaid Waiver program or has left a facility or placement, the Field Services Branch may:

(a) Give verbal authorization for the bed to be reserved; and

(b) Authorize bed hold days in excess of the period covered by Medicaid, or other funding source, only if the availability of the ward's funds has been verified with the Fiduciary Services Branch.

(2) If authorizing a bed hold, the Field Services Branch shall:

(a) Verify the verbal authorization of a bed hold with:

- 1. The facility holding the bed; and
- 2. Written verification including the:
  - a. Client's name;
  - b. Date phone call was placed;
  - c. Date reservation begins;
  - d. Date reservation ends; and
  - e. Rate per day; and

(b) Email the Fiduciary Services Branch that a bed hold has been completed.

(3) If a ward is in a public assistance eligible facility such as a licensed personal care home or family care home, and moves to a temporary stay at a hospital, psychiatric hospital-state and private, or nursing facility, the ward may be entitled to retain the public assistance for three (3) months.

(4) In order to continue public assistance the following requirements shall be met:

(a) A bed hold has been approved;

(b) A physician certifies in writing within ten (10) calendar days of admission that the non Supplemental Security Income (SSI) recipient is unlikely to be confined for longer than ninety (90) full, consecutive days; and

(c) Fiduciary Services Branch provides the DCBS with the following:

1. Notification of the temporary admission; and

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

(5) If the bed hold is not verified or a physician statement is not received within ten (10) calendar days, the ward shall lose eligibility for public assistance and all public assistance shall be returned by the Fiduciary Services Branch to the Kentucky State Treasury from the date of admission.

(6)(a) The Field Services Branch may only authorize a bed hold for a ward residing in other levels of care by verifying and documenting the availability of the ward's funds with the Fiduciary Services Branch.

(b) If funds are verified by the Fiduciary Services Branch, the Field Services Branch shall verify the verbal authorization of a bed hold as specified in subsection (2) of this section.

Section 15. Moving to a New Region. (1) If a ward is being considered for placement from one (1) service region to another, the sending region's Field Services Branch shall consult with the receiving service region's Field Services Branch to determine if the proposed placement meets the needs of the ward.

(2) If placement is appropriate, the Field Services Branch shall request that the receiving region's Field Services Branch visit and assess the ward within forty-five (45) calendar days of placement to ensure the ward is adjusting to the placement.

(3) Within seven (7) working days of the visit, the receiving region's Field Services Branch shall make a recommendation for case file transfer to the sending region as to the ward's adjustment to the placement.

(4) If the ward is not adjusting to placement in the receiving service region:

(a) The sending service region shall consult with the receiving service region for direction and possible resolution; and

(b) The receiving service region may revisit the ward to monitor the placement.

(5) If the ward is adjusting and placement is appropriate, the Field Services Branch shall request a transfer of the ward's case to the receiving region with the receiving region approval.

(6) If the transfer of the case is considered appropriate, the Field Services Branch in the sending region shall:

(a) Review the ward's file;

(b) Ensure the annual report is current; and

(c) Forward the ward's records and notification of transfer date to the Field Services Branch of the receiving region.

(7) The Field Services Branch in the receiving region shall:

(a) Notify the court of new place of residence and transfer;

(b) Assign a Field Services Worker in the new region; and

(c) Ensure health insurance and Medicare Part D are in place and available.

(8) If any of the following apply, the ward shall not be transferred:

(a) Limited appointment that expires within the next sixty (60) days of transfer;

(b) If there are legal actions pending in the current service region including the sale of real or personal property;

(c) A relative or other interested party is petitioning to be appointed successor guardian or conservator;

(d) The ward is in a psychiatric hospital voluntarily or by commitment for a period of less than 360 days; or

(e) The ward has been approved for SCL funding and is awaiting a permanent placement.

(9) If the ward is still in an emergency appointment, the case shall not be transferred without the sending region's Field Services Branch reviewing the facts and making a determination if transfer shall be accepted by the court in the receiving service region.

Section 16. Personal Belongings. (1) If a ward is moved from one (1) facility to another, the Field Services Branch shall ensure that all personal belongings are safely moved with the ward within thirty (30) calendar days of the move.

(2) If the ward's personal belongings may not be moved with the ward, the Field Services Branch shall:

- (a) 1. Determine if the prior facility charges a fee for storage; and
- 2. Through completion of a budget with the Fiduciary Services Branch, the availability of the ward's funds to cover the expense; and
- (b) Store the belongings; or
- (c) Dispose of the belongings as specified in Section 6(10) of this administrative regulation.

Section 17. Physical Health Care Needs of a Ward. (1) The Field Services Branch may approve health care, treatment, or services of a ward as authorized by a court.

(2) The Field Services Branch may approve birth control measures for the ward and authorize intrusive measures such as insertion of intrauterine devices or birth control implants if:

- (a) A medical opinion indicates that there is minimal risk for the ward; and
  - (b) The procedure is considered to be the least invasive and most appropriate method available.
- (3)(a) The Field Services Branch may discuss with the ward or the ward's relative or other interested party the need for surgery or treatment if:

- 1. It is in the best interest of the ward; and
- 2. The ward's relative or other interested party has been involved with the ward's case.

(b) Discussion may include the possibility of the ward's relative or other interested party petitioning the court to be appointed as full guardian, guardian for personal affairs, or as limited guardian for medical affairs only.

(4) Unless emergency surgery or treatment is necessary to preserve the ward's life or to prevent serious impairment of the ward's physical health, the Field Services Branch shall seek, pursuant to KRS 387.660(3), the approval of a court for the:

- (a) Removal of a bodily organ;
- (b) Amputation of a limb; or
- (c) Abortion or sterilization.

(5) The Field Services Branch shall document the health care services provided in the ward's case record including:

- (a) Procedure to be performed;
- (b) Name of the physician performing the procedure;
- (c) Location where the procedure shall be performed;
- (d) Reason the procedure is needed;
- (e) Less intrusive measures that have been tried, if applicable; and
- (f) Date the procedure is to be performed.

Section 18. Mental Health Care Needs of the Ward. (1) The Field Services Branch shall seek court approval for the following procedures:

- (a) Electro-Convulsive Therapy (ECT); or
- (b) Psychosurgery pursuant to KRS 387.660(3).

(2) The Field Services Branch may co-sign a provider's voluntary admission form if a ward is admitted to a mental health or mental retardation facility and if the:

- (a) Ward voluntarily signs the provider's voluntary admission form;
- (b) Admitting physician deems the ward to be capable of voluntarily consenting to the treatment; and
- (c) The cabinet is authorized by the court to make medical decisions for the ward.

(3) If there is no other person willing to petition the court for the ward to be involuntarily admitted, and the ward meets criteria for involuntary admission to a mental health facility or mental retardation facility, the Field Services Branch shall follow the procedures and may initiate the Administrative Office of the Court's Petition for Involuntary Hospitalization:

- (a) In accordance with KRS 202A and 202B; and
- (b) If the Field Service Branch determines it is in the best interest of the ward.

Section 19. Nonemergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization or Abortion. (1)(a) Unless emergency surgery or treatment is necessary to preserve the ward's life or prevent serious impairment of the ward's physical health, the Field

Services Branch shall seek the approval of the court for the nonemergency removal of a bodily organ and the nonemergency amputation of a limb, sterilization or abortion pursuant to KRS 387.660(3).

(b) The nonemergency removal of a bodily organ may include an organ such as the:

- 1. Eye;
- 2. Kidney;
- 3. Liver;
- 4. Lung; or
- 5. Reproductive organs.

(c) The non-emergency amputation of limbs may include:

- 1. Arm;
- 2. Foot;
- 3. Hand; or
- 4. Leg.

(2) The Field Services Branch may discuss with the ward, ward's relative or other interested party:

- (a) The disposition of an amputated limb; or
- (b) Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).

(3) In order to obtain approval of the court, the Field Services Branch shall obtain written statements from two (2) physicians, who have evaluated the ward and who are not in practice together to include the following:

- (a) Ward's name;
- (b) Date when the statement was written;
- (c) Physician's name, area of practice, address, telephone number, and signature;
- (d) Date the physician last evaluated the ward's condition;
- (e) Procedure to be performed;
- (f) Person who shall perform the procedure;
- (g) Location where the procedure shall be performed;
- (h) Date the procedure needs to be performed;
- (i) Ward's prognosis if the procedure is performed;
- (j) Ward's prognosis if the procedure is not performed;
- (k) Risks of performing the procedure;
- (l) Physician's professional opinion as to why the benefits of having the procedure outweighs the risks involved; and
- (m) Alternative and less intrusive procedures that have been performed.

(4) The Field Services Branch shall prepare a written request for legal assistance with the OLS in anticipation of a motion and order that includes the:

- (a) Ward's name;
- (b) Date of adjudication;
- (c) Date the cabinet was appointed;
- (d) Type of appointment and any limitations;
- (e) County having current jurisdiction over the case;
- (f) Court's case number;
- (g) Procedure to be performed;
- (h) Reason the procedure needs to be performed;
- (i) Person who shall perform the procedure;
- (j) Location where the procedure shall be performed;
- (k) Date the procedure needs to be performed;
- (l) Reference to the two (2) physicians who support the need for the procedure, who have evaluated the ward and who are not in practice together;
- (m) Names, relationships, and mailing addresses of relatives to be notified of the court hearing; and
- (n) Disposition of the amputated limb, if applicable.

(5) The Field Services Branch shall forward to the OLS the following:

- (a) The request for legal assistance;
- (b) A copy of the district court's AOC-785, Disability Judgment;
- (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
- (d) The two (2) physicians' statements.

(6) If the motion and order have been received, the Field Services Branch shall file the following information with the court in the case:

- (a) The motion and order prepared by OLS;
- (b) The two (2) physicians' statements;
- (c) An AOC-775, Order of Appointment of Guardian, available

at the court of a ward's disability case; and

(d) An AOC-785, Disability Judgment, available at the court of a ward's disability case.

(7) If required by the court, the Field Services Branch shall attend the hearing on the motion and order.

(8) The Field Services Branch shall provide a certified copy of the signed order to the:

(a) Hospital where the surgery or treatment is to be performed; or

(b) Facility where the ward is residing so that the order shall be sent with the ward to the hospital.

(9) The Field Services Branch shall grant permission for the procedure that has been approved by the court.

(10) The Field Services Branch shall arrange disposition of the amputated limb as specified in Section 19(2)(a) of this administrative regulation.

(11) The Field Services Branch shall include an affidavit and other documentation of surgery in the next annual report to the court.

Section 20. Emergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization, or Abortion. (1) If an emergency procedure needs to be performed within twenty-four (24) hours of notification of need from a physician to preserve the life or prevent serious impairment of the physical health of a ward, the Field Services Branch shall not seek court approval.

(2) The Field Services Branch shall notify the division of the need for an emergency procedure.

(3)(a) The Field Services Branch shall document the emergency need and time table for the procedure and request an affidavit of emergency need from the physician.

(b) The Field Services Branch may request a second opinion and an affidavit from the second physician to verify the need for surgery is an emergency.

(c) The Field Services Branch shall review the affidavit if the affidavit is received and authorized as an emergency procedure as appropriate.

(d) The Field Services Branch may discuss with the ward, ward's relative, or other interested party:

1. The disposition of an amputated limb; or

2. Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).

(e) The Field Services Branch shall include the affidavit and other documentation to the event in the next annual report to the court.

Section 21. Involuntary Mental Health Treatment for Wards.

(1)(a) If it is determined that a ward is in need of mental health hospitalization, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from a mental health professional or hospital.

(b) If the ward refuses to seek mental health services, and no other person is willing or able to file the petition, the Field Services Branch may:

1. File a petition for involuntary hospitalization to the court;

2. Counsel community partners to petition; or

3. Initiate a petition for involuntary hospitalization if the ward meets the following criteria for involuntary admission for mental health treatment:

a. The ward has a mental health diagnosis;

b. The ward can benefit from mental health treatment;

c. The involuntary admission is the least restrictive form of treatment; and

d. The ward presents a danger or threat of danger to self or others.

(2) If the cabinet is the petitioner, the Field Services Branch shall:

(a) Attend the mental inquest hearing; and

(b) Testify at the request of the county attorney.

Section 22. Involuntary Mental Retardation Treatment for a Ward. (1) If it is determined that a ward is in need of mental retardation treatment, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from a mental retar-

dation professional.

(2) If the ward refuses to seek mental retardation treatment, and there is no other person willing or able to file the petition, the Field Services Branch may file a petition if the ward meets the following criteria for involuntary admission for mental retardation treatment:

(a) The ward has a mental retardation diagnosis;

(b) The involuntary admission is the least restrictive form of treatment; and

(c) The ward presents a danger or threat of danger to self or others if not admitted to an intermediate care facility for mental retardation (ICF/MR).

(3) In the case of an involuntary admission to a mental retardation facility, the Field Services Branch shall:

(a) Request approval from the Commissioner of Department for Mental Health, Developmental Disabilities and Addiction Services (DMHDDAS) for the ward's admission to the facility; and

(b) Notify the Division of Protection and Advocacy.

(4) If the involuntary admission is granted, the Field Services Branch shall follow procedures as set out in KRS 387.660(1) for notification to the court.

(5) If the cabinet is the petitioner, the Field Services Branch shall:

(a) Attend the mental inquest hearing; and

(b) Testify at the request of the county attorney.

Section 23. Electro-convulsive Therapy and Psychosurgery. (1) Unless it is a necessary emergency medical procedure to preserve life or prevent serious impairment of the physical health of the ward, the Field Services Branch shall, for all forms of psychosurgery, seek approval from the court pursuant to KRS 387.600(3).

(2) The Field Services Branch shall inform the division of the requested procedure.

(3)(a) The Field Services Branch shall obtain written statements from two (2) psychiatrists who have evaluated the ward and who are not in practice together.

(b) The written statements shall include the following:

1. Ward's name;

2. Date when the statement was written;

3. Psychiatrist's name, area of practice, address, telephone number, and signature;

4. Last date the psychiatrist evaluated the ward's condition face-to-face;

5. Procedure to be performed;

6. Person who shall perform the procedure;

7. Location where the procedure shall be performed;

8. Date the procedure needed to be performed;

9. Ward's prognosis if the procedure is performed;

10. Ward's prognosis if the procedure is not performed;

11. Risks of performing the procedure;

12. Psychiatrist's professional opinion as to why the benefits of having the procedure outweighs the risks involved; and

13. Alternative and less intrusive measures that have been performed.

(4) The Field Services Branch shall prepare a written request for legal assistance to the OLS that includes the:

(a) Ward's name;

(b) Date of adjudication;

(c) Date the cabinet was appointed;

(d) Type of appointment and any limitations;

(e) County having current jurisdiction over the case;

(f) Court's case number;

(g) Procedure to be performed;

(h) Reason the procedure needs to be performed;

(i) Person who shall perform the procedure;

(j) Location where the procedure shall be performed;

(k) Date the procedure needs to be performed;

(l) Reference to the two (2) psychiatrists who support the need for the procedure; and

(m) Names, relationships, and mailing addresses of relatives to be notified of the hearing.

(5) Upon the completion of the written request, the Field Services Branch shall send to OLS the following and requests that OLS prepare a motion and order requesting the consent for treat-

ment:

- (a) Request for legal assistance;
  - (b) A copy of the district court's AOC-785, Disability Judgment;
  - (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
  - (d) Two (2) psychiatrists' statements.
- (6) Once the motion and order requesting the consent for treatment has been received by the guardianship local office, the Field Services Branch shall file the following information with the court in the case:
- (a) Motion and order prepared by OLS;
  - (b) Two (2) psychiatrists' statements;
  - (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
  - (d) A copy of the district court's AOC-785, Disability Judgment.
- (7) If required by the court, the Field Services Branch shall attend the hearing on the motion and order.
- (8) The Field Services Branch shall provide a certified copy of the signed order by the court to the hospital where the procedure is to be performed or to the facility where the ward is residing so that the order shall be sent with the ward to the hospital.
- (9) The Field Services Branch shall include the following in the next annual report to the court:
- (a) The requests for consent for treatment;
  - (b) Action taken by the court; and
  - (c) Treatment provided and resulting outcomes.

Section 24. Life Saving Measures. (1) The procedure for the Field Services Branch to request a change in code status from Full Code (FC) to Do Not Resuscitate (DNR) for a ward for which the Cabinet has the authority to make health care decisions shall include:

- (a)1. Being advised by an attending physician, after clinical examination, that the ward has a:
    - a. Terminal condition;
    - b. Is permanently unconscious; or
    - c. Has a co-morbid condition, in which two (2) or more coexisting medical conditions compromise the ward's chance of recovery or of benefiting from active treatment; and
  2. The physician requests that the ward's code status be changed to DNR;
  - (b) Ensuring that the ward's code status remains FC until consultation has been sought with one (1) of the DCBS Adult Medical Support Section (AMSS) nurse consultants or the Health Care Advisory Committee to change the ward's code status to DNR;
  - (c) Sending the DNR Request Form to be completed and signed by two (2) physicians, one (1) of whom shall be the attending physician; and
  - (d) Notifying and sending the signed DNR Request Form to one (1) of the AMSS nurse consultants.
- (2) The DCBS AMSS nurse consultant shall determine if the ward meets criteria according to the cabinet's protocol or defer the request to change the ward's code status to DNR to the Health Care Advisory Committee.

(3) The AMSS shall notify the Field Services Branch of the determination that was made on the ward's code status.

(4) Upon receiving the determination for DNR, in support of changing the ward's code status to DNR, the Field Services Branch shall complete a hospital's or Emergency Medical Services' (EMS) Kentucky Emergency Medical Services Do Not Resuscitate Order.

(5) The Field Services Branch shall forward a copy of the approval and the DNR Order to all involved facilities.

(6) The Field Services Branch shall notify all involved facilities verbally of the DNR Order.

(7) If the ward's medical condition improves significantly, any party involved, including the Field Services Branch, may review and make a request to change the code status.

Section 25. Death of a Ward. (1) If a ward dies, the Field Services Branch shall contact the Fiduciary Services Branch within one (1) working day upon notification of the death and provide the:

- (a) Name of the ward;
- (b) Date of death;
- (c) Place of death;

- (d) Last residence;
- (e) Name, address and telephone number of the funeral home; and

(f) Assets held by the field office or current placement.

(2) The Field Services Branch may contact the preferred funeral home and inform them of:

- (a) The ward's death and location of the body;
- (b) Any known relative or other interested party;
- (c) Any known prepaid burial assets; and
- (d) The fact that the cabinet shall not be held responsible for any burial arrangements or funeral expenses.

(3) The Field Services Branch shall ensure that a relative or other interested party is notified of the ward's death and funeral home.

(4) If there are no funds available for burial, the Field Services Branch shall attempt to contact a known relative or other interested party to determine their interest and ability to assist with burial expenses.

(5) The Field Services Branch may also seek assistance from the county Fiscal Court or local funeral homes.

(6) As the cabinet's decision-making authority ceases at the time of the ward's death, the Field Services Branch may not grant permission for:

- (a) Autopsies; or
- (b) Organ or tissue donations.

(7) If a ward dies in unusual or unknown circumstances the Field Services Branch shall:

- (a) Make a referral to:
  1. APS; and
  2. County coroner, relative, or other interested party who may order an autopsy; and
- (b) Complete and submit to the department a Notice of Adult Fatality.

(8) If the Field Services Branch determines the ward's hard copy file is complete or six (6) months from date of death, the file shall be forwarded by person or mail to the Fiduciary Services Branch.

Section 26. Cremations. (1) Pursuant to KRS 367.97527, a cremation authorization form shall be signed by an authorizing agent clearly stating the disposition of the cremated remains.

(2) A ward may have established a prepaid cremation account prior to being determined to be disabled in order to specify how personal remains shall be handled.

(3) Other persons legally entitled to order the cremation and disposition of the adult's human remains shall be as listed in KRS 367.97501.

(4)(a) The Field Services Branch shall not sign a cremation authorization, or be allowed to establish a prepaid cremation account for a ward.

(b) If the ward funded a pre-paid cremation account prior to being adjudicated disabled, the ward's desire to be cremated shall be honored.

(c) If the ward has not signed a preneed authorization and there are no adult relatives who are willing to serve as the authorizing agent, the corner may seek an order in district court authorizing the ward's cremation.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Initial Field Visit Report", edition 3/09;
- (b) "DNR Request Form", edition 3/09; and
- (c) "Notice of Adult Fatality", edition 3/09.

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

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

January 21, 2009, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2009, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 564-6930 X 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an adult guardianship, conservatorship program including managing a ward's assets, medical services, and living arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the cabinet to provide guardianship, conservatorship services in the best interest of a ward.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 387.600(1) authorizes the cabinet to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide service provisions for adult guardianship or conservatorship programs pursuant to KRS 387.600(1).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Same as (a).

(c) How the amendment conforms to the content of the authorizing statutes: Same as (a).

(d) How the amendment will assist in the effective administration of the statutes: Same as (a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Departments for Aging and Independent Living, Community Based Services; Mental Health, Developmental Disabilities and Addiction Services. Approximately 160 supports for community living facilities; 92 family group homes; 81 personal care homes; and any family; caretaker; hospital, or psychiatric hospital could be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities specified in question (3) will need to maintain a safe environment for a ward.

(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): This regulation provides necessary information for the public to have a better understanding of how the cabinet operates statewide as guardian to provide services and meet the needs of a ward.

(5) Provide an estimate of how much it will cost the administra-

tive body to implement this administrative regulation:

(a) Initially: FY 09 \$4,072,655.95

(b) On a continuing basis: \$4,085,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds which have been appropriated in the FY 08-10 biennial budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

### 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? Departments for Aging and Independent Living, Community Based Services; Mental Health, Developmental Disabilities and Addiction Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 387.600(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? FY 09 \$4,072,566.95

(d) How much will it cost to administer this program for subsequent years? \$4,085,000

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Guardianship (New Administrative Regulation)

#### 910 KAR 2:050. Compensation for guardianship program services.

RELATES TO: KRS 210.290(5), 387.510(15), 387.760

STATUTORY AUTHORITY: KRS 194A.050(1), 387.760(2)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 387.760(2) the Cabinet for Health and Family Services is entitled to receive reasonable compensation for services rendered and for reasonable and necessary expenses incurred in the exercise of its assigned guardianship or conservatorship duties and powers. This administrative regulation sets forth the policies which shall be employed by the cabinet when charging for services administered by the guardianship program.

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

Section 1. Definitions. (1) "Cost of living" means charges or costs for a ward such as:

- (a) Clothing;
- (b) Food;
- (c) Maintenance;
- (d) Medical care;
- (e) Personal needs;
- (f) Shelter; and
- (g) Other necessities of life.

(2) "Court" means, for the purpose of this administrative regulation, a court of competent jurisdiction.

(3) "Fiduciary Services Branch" means a central office branch under the Division of Guardianship.

(4) "Financial resources" means a ward's income and assets.

(5) "Interested party" means an individual or agency interested in assuming duties and responsibilities on behalf of a ward.

(6) "Personal needs" means an individual's need to purchase varied goods such as:

- (a) Clothing;
- (b) Personal care items; or
- (c) Social support items such as:
  - 1. Telephone;
  - 2. Stationery;
  - 3. Books;
  - 4. Snacks; or
  - 5. Occasional outings.

(7) "Provider" means a facility or entity providing services for a ward such as:

- (a) Self;
  - (b) Caretaker;
  - (c) Family;
  - (d) Group home placement;
  - (e) Hospital;
  - (f) Psychiatric hospital;
  - (g) Personal care home; or
  - (h) Supports for Community Living facility.
- (8) "Ward" is defined by KRS 387.510(15).

Section 2. Compensation for Services. (1) Except for a ward residing in a personal care home or family care home, the cabinet shall assess a monthly compensation fee of six (6) percent allowed by KRS 387.760(2) not to exceed \$200 per month from a ward's excess financial resources:

- (a) In excess of his or her monthly cost of living expenses;
- (b) That shall not:

1. Reduce a ward's account balance, held by the Fiduciary Services Branch, below \$500; and

2. Deprive a ward of funds required for the ward's cost of living expenses including personal needs and provider expenses; and

- (c) If a pre paid burial of \$1,000 has been established.

(2) If the monthly fee of six (6) percent has not been previously assessed, the cabinet may assess a lump sum compensation for services from a ward's excess financial resources not to exceed \$15,000 if:

- (a) Assessing compensation for services shall not:

1. Deprive a ward of funds required for the ward's monthly cost of living expenses including personal needs and provider expenses; and

2. Reduce a ward's account balance, held by the Fiduciary Services Branch, below \$500; and

- (b) A pre paid burial of \$1,000 has been established.

(3) The cabinet shall not assess a fee from an over payment in a ward's account occurring under the following programs:

- (a) Social Security Administration;
- (b) Supplemental Security Income; or
- (c) State Supplementation.

(4) If a ward expires or the cabinet resigned due to a court order, the cabinet shall review a ward's financial resources to determine if:

- (a) Prior compensation for services has been assessed;
- (b) The ward's expenses have been paid up to the ward expiring or resignation by court order; and

(c) Any compensation for services of six (6) percent not to exceed \$15,000 may be assessed before closing the ward's account if no prior compensation is assessed.

(5) Fees assessed shall be placed in a trust and agency account pursuant to KRS 210.290(5).

(6)(a) The Fiduciary Services Branch shall submit a final accounting to the court pursuant to KRS 387.710(3).

(b) The cabinet shall consider the court's approval of compensation as the final compensation for services.

Section 3: Dispute of Compensation of Services. If a dispute over compensation for services occurs, the matter may, by request of an interested party be referred to the court having appropriate venue for resolution.

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2009, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2009, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 564-6390, ext 3432

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the cabinet's compensation of services rendered and expenses incurred by the guardianship program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards for compensation of guardianship so that Kentucky's citizens will know the standards and to ensure adequate operation of the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 387.760(2) entitles the cabinet to receive reasonable compensation of services rendered and for reasonable and necessary expenses incurred in the exercise of its assigned guardianship or conservatorship duties and powers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assess a compensation of six (6) percent allowed by KRS 387.760(2) if the ward has excess financial resources after his or her expenses are paid, if it does not deprive a ward of funds required for his or her costs of living expenses, and if a pre paid burial of \$1,000 has been established. Fees assessed shall not reduce an account balance below \$500 dollars.

(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: Only if a ward has excess financial resources, the amendment will allow the cabinet to assess six (6) percent compensation for services rendered and expenses incurred.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for Kentucky's citizens to



understand the cabinet's compensation standards allowed by KRS 387.760(2).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 387.760(2) by allowing the cabinet to collect six (6) percent compensation for services rendered and expenses incurred. The collection of fees will allow the cabinet to continue to serve as many wards as possible.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide more continuity of services for wards of the cabinet since there are a yearly increasing number of appointed wards to the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Health and Family Services and approximately 1/3, or less than 1,000, guardianship clients will be affected by the compensation for services allowed by KRS 387.760(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: The cabinet will set up a process for collection of fees in accordance with KRS 387.760(2). By virtue of the client being a ward of the state, there are no requirements in this regulation that require the client's involvement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A collection of six (6) percent for compensation for services or expenses incurred shall be assessed (only) if the six (6) percent does not deprive a ward of funds required for his or her cost of living, the cabinet has ensured the payment of the ward's expenses, if the ward has excess financial resources beyond his or her cost of living and after expenses are paid, and if a pre paid burial of \$1,000 has been established. We estimate this will affect only about 1/3 (less than 1,000) of all guardianship wards. This number includes approximately two percent for the sale of property and assets.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet will generate dollars for better service delivery without extra cost of general fund dollars. The fees collected will be used by the Cabinet to expand delivery of services in the guardianship, conservator programs. This includes providing improved service delivery by ensuring appropriate staffing so as caseloads will not exceed 100 clients per case manager.

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

(a) Initially: The department currently provides services in this administrative regulation therefore no additional cost.

(b) On a continuing basis: The department currently provides services in this administrative regulation therefore no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds. All funds collected will be re-appropriated back to the guardianship 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 is no increase in fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees established in this administrative regulation are pursuant to KRS 387.760(2).

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

## 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? Department for Aging and Independent Living, and any county with indigent burial costs.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 387.760(2).

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 generate for state government approximately a total of \$380,000 in collection of guardianship compensation fees for the first year. This amount breaks out into approximately \$241,000 from income, \$60,000 from sale of assets, and \$79,000 from expired wards where fees have not been assessed. County government will have approximately a \$12,000 savings in indigent burial expenses.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate for state government approximately a total of \$311,000 plus Social Security Administration cost of living adjustment in guardianship compensation fees in subsequent years. This amount breaks out into \$241,000 adjusted for cost of living raises in guardianship compensation fees and \$70,000 from sale of assets. County government will have approximately a \$12,000 savings in indigent burial expenses.

(c) How much will it cost to administer this program for the first year? The department currently provides services in this administrative regulation therefore no additional cost.

(d) How much will it cost to administer this program for subsequent years? The department currently provides services in this administrative regulation therefore 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 (+/-): See 4(a) and (b)

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Operations and Support (New Administrative Regulation)

#### 910 KAR 3:020. Behavioral Services for Individuals with Brain Injuries

RELATES TO: KRS Chapter 13B, Chapter 45A, 189A.010(1)(a)- (d), 211.470(3)

STATUTORY AUTHORITY: KRS 189A.050(3)(d)2, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.050(3)(d)2 requires the cabinet to promulgate an administrative regulation to provide direct services to individuals with brain injuries including long-term supportive services and training and consultation to professionals working with individuals with brain injuries. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes procedures for the provision of behavioral

services to individuals with brain injuries.

Section 1. Definitions. (1) "Behavioral services" means services that effectively manage severe behavioral issues which occur as the result of a brain injury, as well as providing rehabilitative services for the brain injury.

(2) "Behavioral specialist" means a professional who has skills and qualifications, as specified in Section 5(3)(b) of this administrative regulation, managing severe behavioral issues which occur as the result of a brain injury, as well as providing rehabilitative services for the brain injury.

(3) "Brain injury" means an acquired or traumatic injury to the brain that affects cognitive, physical, emotional, social, or independent functioning and which necessitates supervised and rehabilitative services.

(4) "Case manager" means a professional described in Section 5(2)(f) of this administrative regulation who manages the overall development and monitoring of a recipient's plan of care.

(5) "Crisis intervention" means a short-term intensive service of a least restrictive nature to aid an individual to regain a sense of control over an immediate situation.

(6) "Crisis stabilization unit" means a unit operated to provide short-term intensive treatment.

(7) "Department" means the Department for Aging and Independent Living.

(8) "Discharge plan" means a plan that is developed to aid a recipient in exiting from one (1) provider to another or into the community.

(9) "Emergency" means a situation in which an applicant is living in conditions that present a substantial risk of death or eminent and serious physical harm to the applicant or others.

(10) "Provider" means an individual, business agency, or facility providing brain injury services.

(11) "Recipient" means an applicant approved for services.

(12) "Residential" means a placement that assists an applicant or recipient who is unable to be managed or treated in the community.

(13) "Review team" means a team composed of three (3) program cabinet staff with professional or personal experience with brain injury or other cognitive disabilities who reviews and approves or denies an application for services.

(14) "Targeted case management" means a set of activities which assist an applicant or recipient in accessing needed medical, social, education, and other supportive services.

(15) "Transitional services" means transitioning a recipient from one (1) setting to another such as for receipt of:

- (a) Crisis intervention services;
- (b) Residential services;
- (c) Community based provider services; or
- (d) In-home environment services.

(16) "Wrap around" means a service or item, specified in Section 5(6), that enhances a recipient's ability to live in the community.

Section 2. Eligibility. (1) An applicant for services shall be eligible to receive a benefit under this program if:

- (a) The applicant has a primary diagnosed brain injury;
- (b) The applicant is a legal resident of Kentucky;
- (c) This program is the payor of last resort; and
- (d) The applicant meets the requirements for crisis intervention or residential services in accordance with subsections (2) and (3) of this section.

(2) An applicant for crisis intervention services shall:

(a) Meet the requirements of subsection (1) of this subsection and be nonMedicaid eligible; or

(b) Be Medicaid eligible receiving services under one (1) of the Medicaid ABI Waivers and in an emergency status.

(3) An applicant for residential services shall:

- (a) Meet the requirements of subsection (1) of this subsection;
  - (b) Be nonMedicaid eligible;
  - (c) Have been charged as a violent offender with the offenses listed in KRS 439.3401(1); and
  - (d) Be in an emergency status.
- (4) An applicant or applicant's guardian or legal representative

shall:

(a) Document that the applicant has no other funding source for services contained in this administrative regulation; and

(b) Provide the department with medical documentation of the applicant's brain injury including a completed DAIL-BI-020, Physician's Recommendation form signed by the applicant's physician confirming diagnosis of brain injury.

(5) The following conditions shall not be included to receive services under this administrative regulation:

- (a) Strokes treatable in nursing facilities providing routine rehabilitation services;
- (b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;
- (c) Progressive dementia;
- (d) Depression and psychiatric disorders; or
- (e) Mental retardation or birth defect related disorders.

Section 3. Application Process. (1) A referral for services may be made by, or on behalf of, an eligible person by contacting the department by:

- (a) Telephone; or
- (b) In writing such as by:
  1. Facsimile;
  2. Email; or
  3. U.S mail.

(2) Upon an applicant's request for services, the department shall provide the applicant with an application packet containing the following forms:

- (a) DAIL-BI-010, Application for Behavioral Services; and
- (b) DAIL-BI-020, Physician's Recommendation.

(3) The applicant or applicant's guardian or legal representative shall provide the department with:

- (a) The completed forms specified in subsection (2) of this section;
- (b) Documentation specified in Section 2(4)(a); and
- (c) Other medical documentation specified in Section 2(4)(b) for processing the request for services.

(4) The department shall:

(a) Submit the completed forms and documentation to the review team who shall determine the applicant's eligibility for services; and

(b) Notify the applicant in writing of approval or denial for services.

(5) An applicant who wishes to appeal the denial of services may make a request in accordance with Section 12 of this administrative regulation.

Section 4. Review Team. (1) At least two (2) members of the review team shall not be supervised by the department's Long Term Care Branch.

(2) A review team shall:

- (a) Assess the applicant's eligibility for services;
- (b) Identify the applicant's need for crisis intervention or residential services;
- (c) Identify potential resources to meet the applicant's need for services;
- (d) Determine that this program is the payor of last resort; and
- (e) Meet monthly at a minimum, or more often as needed for an emergency.

(3) The review team may approve the following behavioral services for a recipient:

(a) Crisis intervention services that shall include:

1. Training and consultation;
2. Wrap around services;
3. Targeted case management;
4. Crisis stabilization unit; or
5. Environmental modification; and
6. Which shall be approved for no more than three (3) months, unless an exception to this timeframe is approved by the department; or

(b) Residential services that may include:

1. Wrap around services;
2. Targeted case management, if applicable; or
3. Transitional services in which a recipient:

a. Shall return to the recipient's previous setting, upon stabilization; and

b. May be provided additional wrap around services to assist with transitioning back to the previous setting, if funding is available.

(4)(a) Except for an emergency as specified in Section 10(11) of this administrative regulation, an application shall be considered in the order in which it is received by the department.

(b) To be considered at the monthly review team meeting, an application shall be received by the department no later than three (3) business days prior to the review team meeting.

(5) The review team may make a recommendation to the applicant and the department about other available resources or means to meet the applicant's needs for services and supports.

(6) A final determination from the review team shall be submitted to the department in writing not to exceed three (3) business days from the date of determination and shall contain:

(a) An approval or denial for services; and

(b) An explanation of the review team's decision and recommendations for other resources to meet the applicant's needs, if services were denied.

(7) If an applicant is determined ineligible for services, the applicant may submit to the department additional medical records or medical documentation to support the diagnosis of the injury.

(8) The department shall submit, at the next review team meeting, the additional medical information for reconsideration of eligibility determination.

Section 5. Covered Services. (1) Covered services shall be prior-authorized by the review team and provided in accordance with a plan of care.

(2) Crisis stabilization unit setting that shall include the following crisis intervention services:

(a) Reestablishing problem-solving abilities;

(b) Securing staff as specified in subsection (5)(b) of this section;

(c) Identifying current priority needs;

(d) Assessing functioning and coping skills; and

(e) Providing stabilization, wrap around, and transitional services.

(3) Targeted case management that shall include the following:

(a) Ensure twenty-four (24) hour availability of services;

(b) 1. Assessment;

2. Advocacy;

3. Reassessment and follow-up;

4. Establishment and maintenance of a recipient's record; and

5. Crisis assistance planning;

(c) Weekly contact with a provider and recipient to ensure the recipient's health, welfare, and safety needs are met;

(d) 1. Initiation;

2. Coordination and implementation of services;

3. Monitoring of the delivery of services and the effectiveness of a plan of care; and

4. Maintaining eligibility;

(e) Assistance with development of an individualized plan of care and updates as necessary based on changes in the recipient's medical condition, transition, and supports;

(f) A plan for transitional services which shall be developed within seven (7) calendar days of receiving services and update as changes occur; and

(g) A case manager who has one (1) or more years experience working in the brain injury field and be one (1) of the following:

1. A registered nurse;

2. A licensed practical nurse; or

3. An individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:

a. Psychology;

b. Sociology;

c. Social work; or

d. Rehabilitation counseling.

(4) Training and consultation services:

(a) May include:

1. Training;

2. Counseling and consultation services to:

a. Professionals;

b. Families; or

c. Providers working with individuals with a brain injury; and

(b) Shall be provided by a behavioral specialist who shall be:

1.a. A psychologist;

b. A psychologist with autonomous functioning;

c. A licensed psychological associate;

d. A psychiatrist;

e. A licensed social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;

g. An advanced registered nurse practitioner (ARNP);

h. A board certified behavior analyst;

i. A certified alcohol and drug counselor;

j. A licensed marriage and family therapist; or

k. A licensed professional clinical counselor; and

2. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques.

(5) Residential setting that shall:

(a) Include such services as:

1. Physical therapy;

2. Occupational therapy;

3. Speech therapy;

4. Cognitive and behavioral therapy; or

5. Neuropsychological consultation and medical management; and

(b) Be provided by a:

1. Licensed facility or certified Medicaid provider which has access to a:

a. Neuropsychologist; and

b. Nurse and physician for medical management; and

2. Have adequate direct care staff provided by an individual who:

a. Is twenty-one (21) years of age or older;

b. Has a high school diploma or GED;

c. Shall submit to a criminal background check and have a valid driver's license;

d. Has a minimum of one (1) year of experience in providing a service to an individual with a disability; and

e. Has completed a brain injury training program prior to service provision and approved by the department;

(6) The individuals providing services specified in subsection (2)(b), (3)(g), (4)(b), and (5)(b)1 and 2 of this section shall document a monthly detailed staff note which shall

(a) Include:

1. Date of the service;

2. The beginning and ending time;

3. The signature, date of signature, and title of the individual providing the service;

4. Information regarding the recipient's health, safety, and welfare;

5. Progress toward outcomes identified in the approved plan of care; and

6. Additional information requested by the department such as daily notes; and

(b) Be provided to the department with a report on the recipient's progress:

1. By the tenth of each month following admission; and

2. By the tenth of the month following the month of discharge.

(7) Wrap around services which shall:

(a) Be facilitated by targeted case management; and

(b) Include:

1. A service such as:

a. Personal care;

b. Companion care;

c. Transportation; or

d. Environmental modification; or

2. Durable medical equipment.

(8) The following services shall not be covered:

(a) Institutionalization;

(b) Hospitalization; and

(c) Medications not otherwise attainable through other re-

sources.

Section 6. Provider Participation. A participating provider shall:

- (1) Have a contractual agreement with the Commonwealth of Kentucky;
- (2) Have policy and procedures reviewed and approved by the department;
- (3) Be responsible for incident reporting requirements established in Section 9 of this administrative regulation;
- (4) Be responsible for the involuntary termination requirements of Section 11(3) of this administrative regulation; and
- (5) Submit an invoice for payment to the department due on day fifteen (15) following month of service;

Section 7. Incident Reporting Process. (1) An incident report:

- (a) Shall be documented on a DAIL-BI-030, Incident Report;
- (b) Shall be submitted by the provider to the individuals or departments indicated and by the timeframes specified in subsection (2)(a)3 and 4, (b)4a and b, and (c)4a through c of this section.
- (2) There shall be three (3) classes of incidents as follows:
  - (a) A Class I incident which shall:
    1. Be minor in nature and not create a serious consequence;
    2. Not require an investigation by the provider;
    3. Be reported to a case manager within twenty-four (24) hours;
    4. Be reported to the recipient's guardian or legal representative as directed by the guardian or legal representative; and
    5. Be retained on file at the provider and case management agency;
  - (b) A Class II incident which shall:
    - 1.a. Be serious in nature;
    - b. Include a medication error; or
    - c. Involve the use of a physical or chemical restraint;
    2. Require an investigation which shall be initiated by the provider within four (4) hours of discovery and shall involve the case manager; and
    3. Require a complete written report of the incident investigation submitted to the department within forty eight (48) hours of discovery; and
    4. Be reported to the following within four (4) hours of discovery to:
      - a. The recipient's guardian or legal representative; and
      - b. The department:
        - (i) Via email, facsimile transmission, or the department's business phone if the incident occurs Monday through Friday by 1:30 p.m.; or
        - (ii) Via email, or cellular number provided by the department if the incident occurs Monday through Friday after 1:30 p.m. or on a holiday or weekend.
    - (c) A Class III incident which shall:
      - 1.a. Be grave in nature;
      - b. Involve suspected abuse, neglect, or exploitation;
      - c. Involve a medication error which requires a medical intervention; or
      - d. Be a death;
      2. Be immediately investigated by the provider, and the investigation shall involve the case manager; and
      3. Require a complete written report of the incident investigation submitted to the department within forty eight (48) hours of discovery; and
      4. Be reported to the:
        - a. Department for Community Based Services, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;
        - b. Recipient's guardian or legal representative within four (4) hours of discovery; and
        - c. Department within four (4) hours of discovery:
          - (i) Via email, facsimile transmission, or the department's business phone if the incident occurs Monday through Friday by 1:30 p.m.; or
          - (ii) Via email, or cellular number provided by the department if the incident occurs Monday through Friday after 1:30 p.m. or on a holiday or weekend.
    - (3) In addition to the report specified in subsection (2)(c)3 of

this section, the following documentation that was in existence at the time of a death shall be submitted to the department:

- (a) A current plan of care;
- (b) A current list of prescribed medications including PRN medications;
- (c) A current crisis plan;
- (d) The provider's medication administration review for the current and previous month;
- (e) Staff notes from the current and previous month including details of physician and emergency room visits;
- (f) Additional information requested by the department;
- (g) A coroner's report; and
- (h) If performed, an autopsy report.

Section 8. Waiting List for Residential Services. The department shall establish and maintain a waiting list for residential services. The waiting list shall be implemented as follows:

- (1) In order to be placed on the waiting list, the individual shall submit to the department the documentation specified in Sections 2(4) and 3(2) of this administrative regulation.
- (2) The order of placement on the waiting list shall be determined chronologically by date of receipt of the completed application packet specified in Section 3(2) of this administrative regulation.
- (3) In determining chronological status, the original date of receipt of the completed application packet shall:
  - (a) Be Maintained; and
  - (b) Not be changed.
- (4) A written notification of the date and placement on the waiting list shall be mailed to the applicant or the applicant's guardian or legal representative.
- (5) Maintenance of the waiting list shall occur as follows:
  - (a) The department shall update the waiting list monthly; and
  - (b) If an individual is removed from the waiting list, written notification shall be mailed by the department to the individual or the individual's guardian or legal representative.
- (8) An individual shall be removed from the waiting list if:
  - (a) The department is unable to locate the individual or the individual's guardian or legal representative;
  - (b) The individual is deceased; or
  - (c) The individual or individual's guardian or legal representative refuses the offer of placement for services or does not request to be maintained on the waiting list.
- (9) The removal of an individual from the waiting list shall not prevent the submittal of a new application at a later date.
- (10) Funding available shall be allocated to an individual having emergency status prior to allocating funding to individuals having nonemergency status.

Section 9. Termination of Services. (1) A recipient may have services terminated if:

- (a) The recipient no longer actively participates in the services within a plan of care;
- (b) Services can no longer be safely provided to the recipient; or
- (c) The recipient is no longer meets the eligibility requirements of Section 2 of this administrative regulation.
- (2) If a recipient has services terminated, the provider shall implement a discharge plan in accordance with the requirements of subsection (4) of this section.
- (3) Voluntary termination and loss of behavioral services shall be initiated if a recipient or the recipient's guardian or legal representative submits a written notice of intent to discontinue services to the provider and to the department.
- (4) Involuntary termination of a recipient by a provider shall require:
  - (a) Simultaneous notice to the department, the recipient, the recipient's guardian or legal representative, and the case manager at least sixty (60) days prior to the effective date of the action, which shall include:
    1. A statement of the intended action;
    2. The basis for the intended action;
    3. The authority by which the action is taken; and
    4. The recipient's right to appeal the intended action through

the provider's appeal or grievance process;

(b) The targeted case manager in conjunction with the recipient and provider to:

1. Provide assistance to ensure a safe and effective service transition; and

2. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured; and

(c) The targeted case manager to gather necessary documentation for transition.

Section 10. Appeal Procedures for Denial of a Request for Services. (1) An applicant who wishes to appeal a denial of services shall notify the department in writing, within thirty (30) days of receipt of notification of the denial.

(2) The department shall:

(a) Acknowledge receipt of a written appeal, in writing, within five (5) working days after receipt of the appeal;

(b) Direct the appeal request to the Division of Administrative Hearings Branch, Office of Communications Review to conduct a hearing pursuant to KRS Chapter 13B; and

(c) 1. Render a final decision in accordance with KRS 13B.120 by the Secretary of the Cabinet for Health and Family Services.

2. The final order shall make clear reference to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

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

(a) "DAIL-BI-010, Application for Behavioral Services", edition 3/09;

(b) "DAIL-BI-020, Physician's Recommendation", edition 3/09; and

(c) "DAIL-BI-030, Incident Report", edition 3/09; and

(d) "DAIL-BI-040, Plan of Care", edition 3/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 910 KAR 3:020

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2009, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2009, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business February 2, 2009. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides targeted case management, residential, crisis intervention, wrap around, and training and consultation services to benefit individuals with a brain injury.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to be in compliance with HB 157, approved in 2004, that requires the cabinet to promulgate a regulation as funding is available from the fifty (50) percent allotted of

sixteen (16) percent collected in violation fees pursuant to KRS 189A.010(a)(a),(b),(c), or (d).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides direct services to individuals with brain injuries including long-term supportive services and training and consultation to professionals working with individuals with brain injuries in accordance with KRS 189A.050(3)(d)2.

(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 serving as many individuals with brain injuries as possible with services provided in KRS 189A.050(3)(d)2 and fees collected pursuant to KRS 189A.050(1).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Same as (a).

(c) How the amendment conforms to the content of the authorizing statutes: Same as (a).

(d) How the amendment will assist in the effective administration of the statutes: Same as (a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,000 Kentucky individuals with brain injuries. The Department for Aging and Independent Living, Department for Medicaid Services; Department for Mental Health, Developmental Disabilities and Addiction Services; Eastern State Hospital; Central State Hospital; and Community residential providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals with a brain injury need to apply for services, provide medical documentation of injury, and meet the eligibility requirements. The departments and providers listed in (3) have to refer an individual with a brain injury to a department designated by the cabinet for services.

(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): This administrative regulation will provide individuals with a brain injury who are currently in an emergency crisis with much needed services. Currently, there is no available assistance to appropriately intervene nor do they have services available to them to ensure safe transition back to their original environment. Further this administrative regulation will provide professional personnel that are trained and experienced in the field of brain injury.

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

(a) Initially: FY 09 approximately \$1,000,000 based on revenue collected pursuant to KRS 189A.050(3)(d).

(b) On a continuing basis: Approximately \$1,000,000 based on revenue collected pursuant to KRS 189A.050(3)(d).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Revenue collected pursuant to KRS 189A.050(3)(d).

(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 fees established in this administrative regulation. No increase in funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

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? Department for Aging and Independent Living, Department for Medicaid Services; and the Department for Mental Health, Developmental Disabilities and Addiction Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.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 administrative regulation will not generate any revenue. Approximately \$1,000,000 based on revenue collected pursuant to KRS 189A.050(3)(d).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue. Approximately \$1,000,000 based on revenue collected pursuant to KRS 189A.050(3)(d).

(c) How much will it cost to administer this program for the first year? FY 09 \$1,000,000.

(d) How much will it cost to administer this program for subsequent years? \$1,000,000.

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:

## VOLUME 35, NUMBER 7 – JANUARY 1, 2009

### ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of December 9, 2008

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 9, 2008 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 November 12, 2008 meeting were approved.

Present were:

Members: Senators Dick Roeding, Alice Forgy Kerr, Joey Pendleton, and Gary Tapp; and Representatives Robert Damron, Danny Ford, Jimmie Lee, and Ron Weston.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Jeffrey Acob, Kentucky Department of Veteran's Affairs; Joe Cowles, Jenny Goins, Fred Nelson, Personnel Cabinet; Jennifer Steele, Mary Beth Braitman, Terry Mumford, Jennifer Jones, Kentucky Retirement Systems; Mark Brengleman, Pam Ison, Barbara Rucker, Frances Short, Michael West, Kentucky Board of Speech-Language Pathology and Audiology; Larry Disney, Kentucky Real Estate Appraisers Board; Karen Alexy, Steven Dobey, Margret Everson, Robert Fraley, Richard Fowler, Jonathan Gassett, Chet Hayes, John Phillips, Michael Roberts, Pam Rogers, Catherine York, Kentucky Department of Fish and Wildlife Resources; Tom Bloemer, Mark Farrow, Edward (Rusty) Ford, Dr. Robert Stout, Kentucky Department of Agriculture; Amy Barker, Lee VanHoose, Lisa Howard, Todd Woodward, Justice and Public Safety Cabinet; Ann Dangelo, Bobby Russell, Rick Taylor, Transportation Cabinet; Kevin Brown Christine Powell, Faith Thompson, Kentucky Department of Education; Sharon Clark, Treva Donnell, William Nold, DJ Wasson, Kentucky Department of Insurance; William Owsley, James Strode, Carmen Bishop, Colleen Keefe, Department of Financial Institutions; Patti Cooksey, Marc Guilfoil, John Forgy, Kentucky Horse Racing Commission; Carrie Banahan, Chandra Venettozzi, Cabinet for Health and Family Services; Stephanie Brammer-Barnes, Dave Sallengs, Office of Inspector General; Rick Christman, Richard P. Covert, Patty Dempsey, Kerry Harvey, Barbara Henchey, Darla Baily, Elizabeth Johnson, Stuart Owen, Heidi Schussler, Ronnie Zimmerman, Department for Medicaid Services; Virginia Carrington, Elizabeth Caywood, Mike Grimes, Department for Community Based Services.

**The Administrative Regulation Review Subcommittee met on Tuesday, December 9, 2008, and submits this report:**

#### Administrative Regulations Reviewed by the Subcommittee:

##### GOVERNOR'S OFFICE: Department of Veterans Affairs: Office of the Commissioner

17 KAR 4:020. Indigent veterans' burial program. Jeffrey Acob, Cemeteries Branch Manager, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert a federal citation; (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 through 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.

##### PERSONNEL CABINET: Office of the Secretary

101 KAR 2:210 & E. 2009 Plan yearbook for the public employee health insurance program. Joe R. Cowles, general counsel, and Fred Nelson, commissioner, represented the cabinet.

##### FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:140 & E. Contribution reporting. Mary Beth Braitman, attorney; Jennifer Jones, acting general counsel; Terry Mumford, attorney; and Jennifer Steele, staff attorney, represented the

systems.

In response to a question by Co-Chair Roeding, Ms. Mumford stated that the compensation limit for the amount of contributions was established by the Internal Revenue Service as part of the Internal Revenue Code, which was updated periodically with cost of living adjustments. She also stated that the Kentucky Retirement Systems was unable to consider compensation above that limit established by the Internal Revenue Service.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete superfluous citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:345 & E. Rollovers and transfers of contributions to other plans.

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 and 2 to clarify rollover and transfer requirements; and (3) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:380 & E. Minimum distribution.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 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.

105 KAR 1:390 & E. Employment after retirement.

In response to a question by Co-Chair Roeding, Ms. Jones stated that retirement systems members were able to get information regarding the amendments from the relevant statutes, administrative regulations, the agency's Web site, and the agency's counselors.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 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.

105 KAR 1:400 & E. Federal taxation limitation year.

In response to a question by Co-Chair Roeding, Ms. Mumford stated that the "administrative scheme" referenced in the summary was comprised of comprehensive procedures to comply with federal protocols for retirement systems payments.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 16 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:420 & E. Account established under 26 U.S.C.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to make technical corrections and to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to

comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:430 & E. General Compliance with federal tax laws.

In response to a question by Co-Chair Roeding, Ms. Jones stated that the Kentucky Retirement Systems administered a certain type of pension plan and that this administrative regulation did not impact other types of plans.

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 through 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 CABINET: Board of Speech-Language Pathology and Audiology: Board**

201 KAR 17:014. Temporary licenses for speech-language pathologist, speech-language pathology assistant, and audiologist. Pam Ison, board chair; Frances S. Short, Executive Director of the Division of Occupations and Professions; and Michael West, assistant attorney general, represented the board.

In response to a question by Senator Kerr, Ms. Ison stated that the purpose of temporary licensure was to allow audiologists and speech-language pathologists to begin work while waiting on the board to meet since the board didn't meet every month. The board was required to meet to approve the licensure requests.

A motion was made and seconded to approve the following amendments: (1) to amend the title to accurately reflect the content of the administrative regulation; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (3) to amend Sections 1 through 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.

201 KAR 17:030. License fees and requirements for inactive status.

In response to a question by Co-Chair Roeding, Ms. Ison stated that the administrative regulation did not establish new fees, but divided license renewals over a two (2) year period.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Real Estate Appraisers Board: Board**

201 KAR 30:010. Definitions for 201 KAR Chapter 30. Mark Brengelman, assistant attorney general, and Larry Disney, executive director, represented the board.

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations; and (2) to amend Sections 2 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**DEPARTMENT OF AGRICULTURE: Livestock Sanitation: Livestock Sanitation**

302 KAR 20:110. Treatment of imported mares. Edward "Rusty" Ford, program manager; Dr. Robert Stout, state veterinarian; and Tom Bloemer, branch manager, represented the department.

A motion was made and seconded to approve the following amendments to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 5 to: (1) correct citations; and (2) comply with the drafting and for-

mat requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:120. Treatment of imported stallions.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2(5) to update the Web site containing the list of laboratories approved to conduct the required testing; and (2) to amend the RELATES TO paragraph and 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.

**Regulation and Inspection; Motor Fuel**

302 KAR 79:010. Testing and Inspection Program.

In response to a question by Co-Chair Roeding, Mr. Bloemer stated that ethanol raised octane levels and lowered mileage.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 9 to cite to the governing federal regulation rather than incorporating it by reference, in accordance with KRS 13A.2261; and (2) to amend Sections 3, 5, and 9 to require use of the current ASTM standards in accordance with KRS 363.902(2). Without objection, and with agreement of the agency, the amendments were approved.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 6:270. Probation and parole policies and procedures. Amy Barker, assistant general counsel; Lee Van Hoose, director; Lisa Howard, program administrator; and Todd Woodward, program administrator, represented the department.

A motion was made and seconded to approve the following amendments to: (1) amend Section 1 to correct the edition dates of the material incorporated by reference; and (2) amend policies and procedures for clarity and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division**

601 KAR 1:040 & E. Application for operating authority and registration of motor carriers. Rick Taylor, deputy commissioner, represented the department.

In response to a question by Co-Chair Roeding, Mr. Taylor stated that this administrative regulation prohibited intrastate bus contracts, but not charter busses.

Co-Chair Roeding stated that it was important to make it easier for charter buses to return to Kentucky.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Board**

704 KAR 3:390. Extended school services. Kevin Brown, general counsel; Christine Powell, director; and Faith Thompson, branch manager, represented the board.

In response to questions by Co-Chair Roeding, Mr. Brown stated that extended school services would not be available for private school students or homeschoolers unless those students joined the public school system. He also stated that the formula for flexible ESS funding was governed by Section 4 of this administrative regulation and that the local school district determined how the funds would be used. The program was currently underfunded because of the budget crisis, but it was a mandated expense.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.



**PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjusters**

806 KAR 9:340. Forms. Treva Donnell, director of agent licensing, and William J. Nold, director of health insurance policy and managed care, represented the department.

806 KAR 9:350. Recognition of financial planning certification and designation for receipt of fees and commissions.

**Health Insurance Contracts**

806 KAR 17:081. Minimum standards for long-term care insurance policies.

In response to a question by Co-Chair Roeding, Mr. Nold stated that the proposed amendments were in response to HB 259 and that the waiver was approved.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 6, 8, 10, 11, 12, 15, 16, 17, 19, 20, 21, 23, 25, 26, 28, and 30 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:300. Provider agreement and risk sharing agreement filing requirements.

**Department of Financial Institutions: Division of Securities: Securities**

808 KAR 10:041. Repeal of 808 KAR 10:040. Colleen Keefe, attorney; William Owsley, attorney; and James Strode, director, represented the division.

808 KAR 10:042. Use of senior certifications and designations.

In response to a question by Co-Chair Roeding, Mr. Strode stated that these requirements were based on national model rules and were intended to keep Kentucky consistent with other states.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add the definition of "Financial Services Regulatory Agency"; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 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.

808 KAR 10:440. Examples of dishonest or unethical practice for broker-dealers and agents.

In response to a question by Co-Chair Roeding, Ms. Keefe stated that a CEO would be required to comply with this administrative regulation if the CEO was the designated responsible control person.

A motion was made and seconded to approve the following amendments to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10:450. Examples of dishonest or unethical practice for investment advisers and investment adviser representatives.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 3 to specify citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10:460. Request for approval of change in control.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a superfluous statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 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.

**Kentucky Horse Racing Commission: Thoroughbred Racing**

810 KAR 1:012. Horses. Patti Cooksey, director of public relations; John Forgy, general counsel; and Marc A. Guilfoil, executive director, represented the commission.

Senator Tapp stated appreciation for the commission's work on contentious issues.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to include EO 2008-668, which established the commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5, and 8 through 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:018 & E. Medication; testing procedures; prohibited practices.

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 include EO 2008-668, which established the commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission; (2) to amend Sections 1, 2, 8, 9, 15, 19, and 22 to use consistent terminology; and (3) to amend Sections 1 through 9, 12 through 17, and 19 through 23 for clarification and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:028 & E. Disciplinary measures and penalties.

Co-Chair Roeding stated that, an agency that increased penalties by reclassification of a felony class, should take into consideration how this change may affect prison population and the Department of Correction's budgets.

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 include EO 2008-668, which established the commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission; (2) to amend Sections 1 and 11 and the material incorporated by reference to reflect the current edition of the Withdrawal Guidelines; and (3) to amend Sections 1, 2, 3, 5, 6, 7, 8, 11, and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Harness Racing**

811 KAR 1:090 & E. Medication; testing procedures; prohibited practices.

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 include EO 2008-668, which established the commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission; (2) to amend Sections 1, 2, 8, 9, 15, 19, and 22 to use consistent terminology; and (3) to amend Sections 1, 2, 5, 6, 8, 9, 12, 13, 15, 16, 17, 19, 20, 21, 22, and 23 for clarification and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:095 & E. Disciplinary measures and penalties.

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 include EO 2008-668, which established the commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission; and (2) to amend Sections 1 through 3 and 5 through 9 to comply with the

drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Health Provider Surveillance Data**

902 KAR 19:030. Release of public data sets for health care discharge data. Carrie Banahan, executive director, and Chandra Venettozzi, health data administrator, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a superfluous statutory citation; and (2) to amend Section 2 to correct a technical error. Without objection, and with agreement of the agency, the amendments were approved.

**Office of Inspector General: Division**

906 KAR 1:160. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Stephanie Brammer-Barnes, regulation coordinator, and Dave Sallengs, manager, represented the division.

**Department for Medicaid Services: Medicaid Services**

907 KAR 1:835 & E. Michelle P. Waiver services and reimbursement. Kerry Harvey, general counsel; Elizabeth Johnson, commissioner; and Stuart Owen, regulation coordinator, represented the department. Rick Christman, CEO of Employment Solutions; Richard P. Covery; and Darla Bailey and Barbara Henchey, Kentucky Association of Private Providers, appeared in opposition to this administrative regulation. Patty Dempsey, Executive Director of The Arc of Kentucky, appeared in support of this administrative regulation.

Representative Lee thanked the department and Protection and Advocacy for working hard to resolve the issues pertaining to this administrative regulation.

Mr. Christman stated that this administrative regulation was being modified to remove the requirement for independent case management by a provider in cases with an issue of continuity or insufficient numbers of case managers in the area. He also stated that, pursuant to the Mercer Report, there was a conflict of interest if a provider was also the case manager. He further stated disapproval of the proposed two (2) year continuation of case management performance by providers.

Ms. Dempsey thanked the department for amending this administrative regulation to provide for additional respite.

Mr. Covery stated that he was the father of a daughter with multiple disabilities and that her former case manager tended to place the needs of his daughter secondary to the interests of the parent company. He stated that he believed it was acceptable for a case manager to be affiliated with a provider company only if the two (2) operated at arm's length and were able to prove that the provider company has used some non-sister agency services.

Representative Lee stated that, in less-populated areas, there were not enough independent case managers, and some clients would be denied services under the Michelle P. program.

Ms. Johnson stated that the department had extended services despite its inability to afford the additional expense. She also stated that the department had compromised to include a transition period for those who may be unduly burdened by the independent case manager requirement. Additionally, the waiver would be effective only if CMS approved the request to amend the policy decision and allow grandfathering and a cut-off date for continued case management with provider interests.

Co-Chair Roeding stated that the administrative regulation provided for independent case management unless and until CMS agreed to amend the waiver. He also encouraged the department to continue to work with stakeholders as budget predicaments allow.

Ms. Henchey thanked those who have worked on the Michelle P. program and respite issues. She also stated that only one (1) issue remained that she felt to be contentious, the reimbursement rate for adult day care service units. The cost to restore the reimbursement rate would be neutral and that stakeholders interested in this issue were not present during the administrative regulation negotiations.

Ms. Bailey stated that the administrative regulation defined "adult day care level II", but cut the reimbursement rate on units of service. She also stated that this was a very small program with approximately 200 clients and that she supported a restoration of the reimbursement rate.

In response to a question by Senator Tapp, Ms. Johnson stated that overall there was an expansion of services even though the reimbursement rate for adult day care level II was reduced. She also stated that the overall expansion expense was a sixty-six (66) million dollar increase.

Ms. Bailey requested that the following written comments be included in the record of the meeting:

Adult Day Health Centers, licensed by the OIG office, emerged in the mid to late 1990s to deal with the growing medical needs of the aging population. These programs proved invaluable by allowing the frail and elderly to remain in the community and to reserve nursing level of care. As a result of the developmentally disabled population aging, a crisis emerged in which young adults with complex medical issues and needs required a day program that would be able to meet these complex needs while allowing the individual to continue to be served in the community. Many families, upon completion of the individual high school tenure, had no program for the child with special needs to attend. Social programs, we now call Adult Day Trainings, existed but were unable to accommodate particular needs such as nursing services, personal care needs, and the functioning level of some of the individuals.

By the late 1990s, several programs across the Commonwealth began to specialize in services to this specific group: young adults with special medical needs. In 2000, the Commonwealth recognized those programs as Adult Day Level IIs, a higher level of acuity, which warranted a higher rate from the more traditional senior adult day health programs. These programs participated by providing a sampling (snap shot) of an assigned day and proved to be serving 80% or more intellectually disabled and developmentally disabled young adults with the Home and Community Based waiver (HCBS). This allowed for a higher rate differential to be applied to these particular sites. To participate, any enrolled provider requests the date quarterly from DMS and follows the process.

Also, in April 2002, as a direct result of the passage of HB 144, a Commission on Services and Supports for People with Mental Retardation and Developmental Disabilities "Plan to Plan" for the 10 years began to address the extensive Supports for Community Living (SCL) waiting list and the SCL waiver began to expand "slots". Consumers, who had literally waited for years, were now being offered and receiving services. Several of these consumers required more intensive, medical-type services. As a result, Adult Day Level IIs began to accept the SCL waiver. Individuals that were not being served through traditional nonmedical day services were now able to receive day services that included nursing care and ancillary services.

In 2006, the Supports for Community Living (SCL) waiver made changes to Adult Day Training services. Services became classified as on-site and off-site. Due to the medical complexity of the consumers served in the SCL waiver, MH/MR and DMS agreed to add a \$.50 add-on rate to on-site and off-site reimbursement rates to the ADH Level II's providers. In this agreement, Level IIs agreed to eliminate the Snap-5 intensity rate payment (20% enhanced rate).

Also, in 2006 and 2007, the Adult Day Health Level IIs met with numerous Medicaid officials to address the complexity of being a provider accepting multiple waivers and worked toward a definition of Adult Day Health Level II and toward streamlining provider requirements.

In August 2001, the HB 144 Commission recommended developing an alternative low cost waiver to serve individuals with less costly needs. (Kentucky's Plan from Dreams to Realities for Quality and Choice for all Individuals with Mental Retardation and other Developmental Disabilities, p. 12) The staff of the Department of Mental Health, advocates, consumers, and providers worked diligently to create a proposed waiver that some referred to as "SCL Lite" or the "KEI waiver." The ultimate goal of the proposed waiver was to provide person-centered, nonresidential services to individuals who were on the SCL waiting list (1769 individuals, per

9/17/01 report "HB 144"). After much discussion, the Cabinet for Health Services declined to submit the waiver.

In 2002, with the assistance of Protection and Advocacy, a class action lawsuit was filed on behalf of Michelle P. and nine others. In August 2006, the suit was settled and the hopes of the person-centered, nonresidential services reemerged. For individuals with intellectual disabilities and developmental disabilities living with their families, hope emerged that they could receive enhanced home and community-based services to assist them to remain in their homes as independently as possible.

The Michelle P. waiver has been viewed by some as a way to maximize our state general fund dollars that serve individuals. Currently, these dollars given through the Comprehensive Care Centers support individuals and families with services such as respite and companion services. It has been one of the goals of the Michelle P. waiver to provide a mechanism to bring services currently funded out of our state general funds into a waiver to maximize our federal match (70/30). Today, consumers are receiving multiple funding streams to package together the services they need in order to remain in the community with natural supports.

Whereas the Michelle P. program still does not address the waiting list for residential supports for individuals with intellectual disabilities and developmental disabilities (ID/DD), it has been viewed as an alternative for family members and individuals waiting with little or no services. These services will allow for the flexibility to maximize community-based options.

Providers of Medicaid waivers who serve individuals with ID/DD have advocated for such an alternative as the original SCL Lite or now the Michelle P. waiver to allow consumers who are receiving the Home and Community Based (HCBS) waiver (designed for the elderly and disabled) a more viable person-centered option.

The current Michelle P. administrative regulation defines ADH II, yet cuts the reimbursement rates from \$3.00 or \$3.50 a unit to \$2.75 a unit. The HCBS rate is \$3.12 per unit. ADH Level IIs are vital to the initial roll out of the Michelle P. waiver and to initiate state general fund cost-savings. In addition, it will allow a medical model day program to meet the needs of the more medically fragile individuals that are now homebound, many with aging caregivers. The Supports for Community Living waiver requires that staff complete a basic medication administration course or curriculum, whereas a licensed provider is required to provide at least one nurse on site at all times.

I am requesting that the Cabinet for Health and Family Services reconsider its rate elimination or reduction to the current Adult Day Health Level IIs.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend Section 6 to create a new subsection to establish the enrollment caps for the next three (3) fiscal years of 3,000, 4,500, and 6,000 individuals; (3) to amend Section 7 to: (a) provide that, contingent upon approval by the Centers for Medicare and Medicaid Services and ending January 1, 2011, case management may be provided by an agency providing other Michelle P. waiver services if specified requirements are met; and (b) delete the requirement that respite services only be provided in the recipient's residence or an ADHC center during posted hours of operation; (4) to amend Section 8 to: (a) clarify that respite provided as part of CDO (consumer-directed option) services may be provided in excess of the established cap on respite services provided in non-CDO settings; and (b) specify that a consumer's twelve (12) month budget may encompass a service or combination of services if each service is in the consumer's plan of care and approved by the department; (5) to amend Section 14 to incorporate by reference three documents mentioned in the administrative regulation; and (6) to amend Sections 1 to 10, 12, and 14 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Division of Family Support: Division**

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). Virginia Carrington, branch manager; Elizabeth Caywood, policy analyst; and Mike

Grimes, Adoption Services Branch Manager, represented the division.

#### **Food Stamp Program**

921 KAR 3:020 & E. Financial requirements.

In response to a question by Representative Ford, Ms. Caywood stated that the federal government would allow biweekly, rather than monthly, card disbursement, but to do so would require a systems' change.

Senator Tapp stated that, while the division was investigating moving to a biweekly, rather than monthly, card disbursement, please also investigate added costs of making this change.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 3 to correct a federal cross-reference citation; (2) to amend the NESSECITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 and 7 to make technical corrections and to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 3 to clarify that money withheld from certain income sources shall not be counted if the money is withheld to repay an overpayment. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:045 & E. Issuance procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 through 5 to make technical corrections and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Day Care**

922 KAR 1:031. Repeal of 922 KAR 1:030. Selection and approval of adoptive parents.

922 KAR 1:050. State-funded adoption assistance.

922 KAR 1:060. Federal Title IV-E adoption assistance.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 5 to correct statutory citations and internal references; 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.

922 KAR 1:100. Public agency adoptions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend the STATUTORY AUTHORITY paragraph and Sections 1, 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.

922 KAR 1:140. Foster care and adoption permanency services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to correct statutory citations; and (2) to amend Sections 1, 3, 9, 10, and 11 for clarification and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred to the January 13, 2009, meeting of the Subcommittee:**

#### **PERSONNEL CABINET: Personnel Cabinet, Classified**

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

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

301 KAR 2:083 & E. Holding and intrastate transportation of captive cervids.

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301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

301 KAR 2:300. Black bears. Dr. Karen Alexy, wildlife director; Steven Dobey, wildlife program coordinator; Jonathan Gassett, commissioner; and Catherine York, deputy general counsel, represented the department. Chet Hayes, Executive Director of United Trappers of Kentucky; John Phillips, Executive Director of Kentucky Hunters for the Hungry, Inc.; Michael Roberts, Vice President of United Bowhunters of Kentucky; and Representative Robin Webb appeared in support of this administrative regulation. Pam Rogers, State Director of the Humane Society of the United States, appeared in opposition to this administrative regulation.

Mr. Gassett stated that the department wished to defer this administrative regulation to the January 2009 meeting in order to address the firearms constitutionality issues. He stated that the department still wished to discuss the policy issues of black bear hunting in Kentucky at this meeting. He gave a brief history of black bear hunting in Kentucky, including that, in the past, hunting caused extirpation of the species and that, in recent years, the black bear population has stabilized, especially in the southeastern part of the state. Mr. Gassett stated that this administrative regulation did not allow hunting black bears with dogs, baiting bears, or selling harvested bear parts. He further stated that Pine Mountain had a no-hunting refuge area for the bears. He stated that, by having the hunt in December, female bears should be more protected since most of them would be in their dens in December. He also stated that this bear hunt did not serve the purpose of dealing with nuisance bears. He stated that the hunt would take place only in Pike, Letcher, and Harlan Counties.

Co-Chair Roeding thanked the department for its commitment to protecting bears.

In response to questions by Co-Chair Damron, Mr. Gassett stated that, in order to enforce the take limit for black bears, each hunter would be required to check by telephone at the end of each hunt day to determine how many bears had been taken thus far in the hunt. He also stated that a sportsman would not be cited if over ten (10) bears were taken during a day of the open season, and that the hunt would be ended on a day in which the limit had been reached or exceeded.

In response to a question by Senator Kerr, Mr. Gassett stated that Kentucky allows baiting, but not for black bears at this time. He also stated that baiting was not usually detrimental to a bear population but that the department was not considering allowing it anytime soon.

Representative Webb stated that she was unaware of any outcry from sportsmen for permission to bait black bears.

In response to a question by Senator Tapp, Mr. Gassett stated that a black bear permit would probably cost approximately twenty (20) dollars, but that the fee would have to be established in another administrative regulation.

In response to questions by Representative Weston, Mr. Gassett stated that it was not currently possible to determine the number of bears necessary for a huntable population, but that models and trend data show drastic increasing in spotting, illegal harvesting, and nuisance reports. He estimated 350 bears in the area of the proposed hunt. He also stated that the bears were primarily in Pike, Letcher, and Harlan Counties, but that hunting would not take place at the Pine Mountain bear refuge area.

Mr. Gassett stated the department's perspective on constitutional second amendment issues pertaining to this administrative regulation. He stated that surrounding states have comparable laws in place.

Mr. Phillips stated that it was essential for the department to regulate weapons in order to maintain resources. He also stated that Hunters for the Hungry provided venison for approximately 300,000 Kentuckians. He stated his opinion that this administrative regulation did not violate the second amendment of the United States Constitution.

Mr. Roberts stated that the United Bear Hunters of Kentucky wanted to hunt bear and did not want the department stymied in its enforcement of this administrative regulation.

In response to a question by Co-Chair Damron, Mr. Phillips stated that it was necessary for the department to regulate firearms

during a hunt because it would otherwise be impossible to enforce administrative regulations pertaining to legal methods of taking. He also stated that, if an animal was shot with a firearm during bow-hunting season, it would likely not be possible to determine which hunter illegally shot the animal if firearms were permitted in the area of the hunt.

Ms. Rogers requested that the subcommittee oppose this administrative regulation because she stated that there were not enough bears to ensure that such a hunt would not destabilize the bear population. She stated that, because of the way the limit would be enforced, many more than ten (10) bears may be taken. She also stated that other states with such a low bear population did not allow hunting. She further stated that the administrative regulation did not adequately protect female bears and cubs. She stated that the department made the decision to allow the hunt prior to having complete data on black bear populations in the area.

In response to a question by Representative Ford, Ms. Rogers stated that the Humane Society did not have a specific number of bears that would indicate a population stable enough for a hunt and that Florida has a bear population of approximately 3,000, but they do not have a hunt; therefore, Kentucky would need at least more than 3,000 bears.

Representative Webb stated that she was certain a resolution would be forthcoming regarding the constitutionality of this administrative regulation. She also stated that the subcommittee should visit the Humane Society's Web site to ascertain their agenda.

Mr. Gassett stated that all states with black bears do not have hunts, not necessarily because of conservation reasons, but because of political pressure. He also stated that the department would never have "complete" data on black bear populations because the scientific research was ongoing and bear populations fluctuated. He stated that the department's current estimate of the black bear population is a conservative one.

Co-Chair Damron stated his appreciation for the department's willingness to defer consideration of this administrative regulation in order to address the constitutionality of some of the provisions.

Senator Kerr requested that Ms. Rogers rebut previous testimony. Ms. Rogers stated that the Humane Society had been mischaracterized. She stated that she had never been dishonest and that her organization had never tried to stop other forms of hunting, but rather wished to stop certain abuses related to hunting. She also stated that she had had trouble getting the department to submit records through Freedom of Information requests. Without objection, and with agreement of the agency, this administrative regulation was deferred.

### **ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Water Quality**

401 KAR 5:010. Operation of wastewater systems by certified operators.

#### **Water Quality Standards**

401 KAR 10:026. Designation of uses of surface waters.

401 KAR 10:029. General provisions.

401 KAR 10:030. Antidegradation policy implementation methodology.

401 KAR 10:031. Surface water standards.

#### **Certified Operators**

401 KAR 11:001. Definitions for 401 KAR Chapter 11.

401 KAR 11:010. Board of certification.

401 KAR 11:020. Standards of professional conduct for certified operators.

401 KAR 11:030. Wastewater treatment and collection operators-classification and qualification.

401 KAR 11:050. Operator certification.

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401 KAR 11:060. Certification fees.

### **JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Law Enforcement Council: Council**

503 KAR 1:170. Career Development Program.

### **TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Vehicle Commission**

605 KAR 1:060. Temporary off-site sale or display event.

### **LABOR CABINET: Department of Workplace Standards: General**

803 KAR 2:300. General.

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

803 KAR 2:306. Occupational health and environmental controls.

803 KAR 2:307. Hazardous materials.

803 KAR 2:309. General environmental controls.

803 KAR 2:315. Hand and portable powered tools and other hand-held equipment.

803 KAR 2:316. Welding, cutting, and brazing.

803 KAR 2:317. Special industries.

### **ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Office of Mine Safety and Licensing**

805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises.

### **PUBLIC PROTECTION CABINET: Department of Insurance: Authorization of Insurers and General Requirements**

806 KAR 3:170. Annual audited financial reports.

### **Kentucky Horse Racing Commission: Thoroughbred Racing**

810 KAR 1:015. Claiming races.

### **Harness Racing**

811 KAR 1:075. Racing and track rules.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program

921 KAR 2:017. Kentucky works supportive services.

### **The following other business was addressed by the subcommittee:**

A brief video in honor of Co-Chair Roeding's years of service to the Commonwealth was presented, and Co-Chair Roeding was issued a citation on behalf of the subcommittee in recognition of his retirement from the General Assembly.

Senator Pendleton thanked Co-Chair Roeding for his service to the Commonwealth.

Senator Tapp stated how much he had enjoyed working with Co-Chair Roeding.

Co-Chair Roeding stated that it is important to continue to do good work for the citizens of the Commonwealth as it relates specifically to administrative regulations.

David Nicholas stated his thanks for the hard work of Co-Chair Roeding and to all members who serve or have served on the Administrative Regulation Review Subcommittee.

**The Subcommittee adjourned at 12:45 p.m. until January 13, 2009.**

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**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.

NONE

## **CUMULATIVE SUPPLEMENT**

### **Locator Index - Effective Dates**

**G - 2**

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2008 through June, 2009. 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 34 are those administrative regulations that were originally published in VOLUME 34 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2008 bound Volumes were published.

### **KRS Index**

**G - 11**

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 35 of the Administrative Register.

### **Technical Amendment Index**

**G - 25**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2007 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

### **Subject Index**

**G - 26**

The Subject Index is a general index of administrative regulations published in VOLUME 35 of the Administrative Register, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	34 Ky.R. Page No.	Effective Date	Regulation Number	34 Ky.R. Page No.	Effective Date
<b>VOLUME 34</b>					
The administrative regulations listed under VOLUME 34 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.					
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			Amended	2559	(See 35 Ky.R.)
(Note Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			201 KAR 20:110		
			Amended	2338	
			As Amended	2525	6-18-08
			201 KAR 20:161		
			Amended	2341	
			As Amended	2527	6-18-08
103 KAR 3:010E	2066	2-11-08	201 KAR 20:225		
Replaced	2379	6-6-08	Amended	2343	
103 KAR 3:030E	2266	2-19-08	As Amended	2528	6-18-08
Replaced		7-7-08	201 KAR 20:360		
103 KAR 3:040E	1925	1-15-08	Amended	1792	
Replaced	2381	6-6-08	Withdrawn		2-26-08
103 KAR 31:180E	1350	11-15-07	201 KAR 21:095		
Replaced		7-7-08	Amended	1533	
201 KAR 20:070E	2500	5-5-08	Withdrawn		2-15-08
Replaced		(See 35 Ky.R.)	201 KAR 23:015		
201 KAR 30:190E	1628	12-14-07	Amended	2423	
Replaced	2394	6-6-08	As Amended	781	10-15-08
307 KAR 1:040E	909	10-8-07	201 KAR 23:070		
Replaced	1719	2-1-08	Amended	2424	
401 KAR 9:010E	2275	3-3-08	As Amended	782	10-15-08
Replaced		(See 35 Ky.R.)	201 KAR 33:020		
503 KAR 1:190E	2069	2-6-087	Amended	2211	
Replaced	2534	7-7-08	As Amended	2529	7-7-08
900 KAR 6:050E	2502	4-29-08	301 KAR 1:130		
Replaced		(See 35 Ky.R.)	Amended	2427	(See 35 Ky.R.)
900 KAR 7:020E	958	9-18-07	301 KAR 1:140		
Expired		3-16-08	Amended	2213	(See 35 Ky.R.)
907 KAR 1:015E	164	7-12-07	301 KAR 1:146		
907 KAR 1:160E	1653	12-5-07	Amended	2215	(See 35 Ky.R.)
Replaced	2535	7-7-08	301 KAR 1:155		
907 KAR 1:820E	1381	11-15-07	Amended	2217	
Replaced	2409	6-6-08	Amended	2552	(See 35 Ky.R.)
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			301 KAR 2:041		
11 KAR 4:080			Amended	2222	
Amended	2322	8-1-08	As Amended	2529	6-11-08
11 KAR 5:145			301 KAR 2:049		
Amended	2323	8-1-08	Amended	2428	(See 35 Ky.R.)
11 KAR 18:010		(See 35 Ky.R.)	301 KAR 2:081		
Amended	2325	8-1-08	Amended	2432	(See 35 Ky.R.)
16 KAR 7:010		(See 35 Ky.R.)	301 KAR 2:111		
Amended	2413	8-1-08	Amended	2435	7-9-08
101 KAR 1:335			301 KAR 2:122		
Amended	2419	(See 35 Ky.R.)	Amended	2437	7-9-08
101 KAR 2:221	2487	(See 35 Ky R)	301 KAR 2:172		
103 KAR 3:030			Amended	2439	(See 35 Ky.R.)
Amended	2329		301 KAR 2:178		
As Amended	2516		Amended	2442	(See 35 Ky.R.)
103 KAR 31:180	1592		301 KAR 3:022		
As Amended	2524		Amended	2224	(See 35 Ky.R.)
103 KAR 50:050	890		401 KAR 3:310		
Amended	2421		Amended	2562	(See 35 Ky.R.)
Withdrawn		5-28-08	301 KAR 4:201	2491	7-9-08
201 KAR 2:220			401 KAR 6:001	2626	(See 35 Ky.R.)
Amended	2421	8-1-08	401 KAR 6:320		
201 KAR 7:015			Amended	2576	(See 35 Ky R.)
Amended	2557		401 KAR 6:350	2627	(See 35 Ky R.)
Amended	1528		401 KAR 9:010	2369	(See 35 Ky R.)
As Amended	1948		401 KAR 9:020	2370	(See 35 Ky R.)
Withdrawn		8-28-08	401 KAR 32:010		
201 KAR 16:110	1902		Amended	2448	(See 35 Ky.R.)
As Amended		(See 35 Ky R)	401 KAR 32:050		
201 KAR 18:210			Amended	2449	(See 35 Ky.R.)
Amended	2558		401 KAR 34:005		
201 KAR 20:070			Amended	2451	(See 35 Ky.R.)



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	34 Ky.R. Page No.	Effective Date	Regulation Number	34 Ky.R. Page No.	Effective Date
401 KAR 34:080			Amended		(See 35 Ky.R.)
Amended	2455	(See 35 Ky.R.)	900 KAR 6:050		
401 KAR 35:005			Amended	2594	
Amended	2457	(See 35 Ky.R.)	As Amended	826	10-15-08
401 KAR 35:080			900 KAR 7:020	1334	
Amended	2462	(See 35 Ky.R.)	Withdrawn	**	11-1-08
401 KAR 36:030			902 KAR 55:030		
Amended	2463	(See 35 Ky.R.)	Amended	2607	(See 35 Ky.R.)
401 KAR 37:005			902 KAR 55:110		
Amended	2465	(See 35 Ky.R.)	Amended	2609	(See 35 Ky.R.)
401 KAR 37:040			907 KAR 1:013		
Amended	2468	(See 35 Ky.R.)	Amended	1560	
401 KAR 38:005			Withdrawn		11-15-07
Amended	2470	(See 35 Ky.R.)	907 KAR 1:160		
401 KAR 38:040			Amended	1834	
Amended	2474	(See 35 Ky.R.)	Amended	2315	
401 KAR 43:005			As Amended	2535	7-7-08
Amended	2475	(See 35 Ky.R.)	907 KAR 1:479		
500 KAR 14:010			Amended	2611	(See 35 Ky.R.)
Amended	2580		908 KAR 3:050		
Withdrawn		7-18-08	Amended	2350	(See 35 Ky.R.)
500 KAR 14:020			908 KAR 3:060		
Amended	2582		Amended	2352	
Withdrawn		7-18-08	As Amended	2540	6-18-08
501 KAR 3:140			910 KAR 1:160		
Amended	2476	(See 35 Ky.R.)	Amended	1860	
501 KAR 6:120			921 KAR 3:030		
Amended	2345	7-7-08	Amended	2623	(See 35 Ky.R.)
501 KAR 6:140			921 KAR 1:400		
Amended	2586	(See 35 Ky.R.)	Amended	1870	
501 KAR 6:999			As Amended	2143	3-19-08
Amended	2347		921 KAR 1.410		
As Amended	2531	7-7-08	Amended	1874	
501 KAR 7:070			As Amended	2146	3-19-08
Amended	2481	8-1-08	921 KAR 1:430	1909	
503 KAR 1:190	2534	7-7-08	As Amended	2150	3-19-08
702 KAR 3:270			921 KAR 2:015		
Amended	2231	(See 35 Ky.R.)	Amended	1879	
702 KAR 4:180			As Amended	2152	3-19-08
Amended	2484	(See 35 Ky.R.)	922 KAR 1:310		
803 KAR 25:012			Amended	2355	(See 35 Ky.R.)
Amended	633		922 KAR 2:170		
806 KAR 12:180	1600	(See 35 Ky.R.)	Amended	1284	
810 KAR 1:015			As Amended	2543	6-18-08
Amended	1220		922 KAR 2.210		
Amended	2053		Amended	1290	
815 KAR 7:120			As Amended	2547	6-18-08
Amended	2590	(See 35 Ky.R.)			
815 KAR 7:125					

## VOLUME 35

### 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 4:140E	505	8-8-08	Replaced	208	9-5-08
101 KAR 2:066E	507	7-18-08	201 KAR 27:100E	221	7-15-08
101 KAR 2:210E	1130	9-15-08	202 KAR 7:330E	226	7-11-08
105 KAR 1:140E	709	9-2-08	301 KAR 2:221E	1706	11-21-08
105 KAR 1:345E	711	9-2-08	301 KAR 2:222E	1708	11-21-08
105 KAR 1:380E	712	9-2-08	301 KAR 2:083E	725	8-29-08
105 KAR 1:390E	715	9-2-08	301 KAR 2:225E	729	8-29-08
105 KAR 1:400E	719	9-2-08	302 KAR 76:110E	5	6-4-08
105 KAR 1:420E	722	9-5-08	302 KAR 79:010E	1132	10-10-08
105 KAR 1:430E	724	9-2-08	307 KAR 1:050E	510	7-21-08
200 KAR 5:390E	509	7-17-08	401 KAR 9:010E		(See 34 Ky.R.)
201 KAR 5:120E	1391	11-12-08	Replaced	259	8-21-08
201 KAR 20:070E		(See 34 Ky.R.)	401 KAR 10:001E	6	6-12-08
			502 KAR 15:010E	229	7-15-08
			502 KAR 32:010E	230	7-1-08
			601 KAR 1:040E	1134	9-29-08
			702 KAR 7:130E	233	6-13-08
			803 KAR 25:089E	234	7-1-08
			803 KAR 25:091E	236	6-1-08

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
806 KAR 2:092E	512	8-14-08	As Amended	1434	
806 KAR 15:080E	514	8-14-08	31 KAR 4:140		
806 KAR 17:180E	238	7-15-08	Amended	612	
806 KAR 17:540E	516	7-15-08	As Amended		12-5-08
806 KAR 17:545E	518	7-15-08	101 KAR 1:325		
806 KAR 17:555E	521	7-15-08	Amended	1846	
810 KAR 1:018E	731	9-5-08	101 KAR 1.335		(See 34 Ky.R.)
810 KAR 1:025E	1392	11-3-08	As Amended	256	9-5-08
810 KAR 1:028E	739	9-5-08	101 KAR 2.066		
811 KAR 1:070E	1399	11-3-08	Amended	614	
811 KAR 1:090E	744	9-5-08	101 KAR 2:210		
811 KAR 1:095E	752	9-5-08	Amended	1243	
815 KAR 25.080E	1713	12-15-08	101 KAR 2:221		(See 34 Ky.R.)
900 KAR 6:050E		(See 34 Ky.R.)	As Amended	16	8-1-08
Replaced	826	10-15-08	102 KAR 1:300	1950	
907 KAR 1:170E	1715	12-2-08	103 KAR 1:150	675	
907 KAR 1:825E	240	6-16-08	As Amended	1435	
907 KAR 1:835E	524	7-17-08	103 KAR 3.020		
907 KAR 1:911E(r)	248	10-31-08	Amended	82	
907 KAR 3:210E	1407	11-10-08	Amended	576	
921 KAR 2:370E	1137	9-29-08	As Amended	760	10-31-08
921 KAR 3:020E	1142	9-29-08	103 KAR 3:050		
921 KAR 3:045E	1147	9-29-08	Amended	87	
922 KAR 1:360E	250	6-30-08	As Amended	764	10-31-08
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			103 KAR 25:111(r)	1951	
10 KAR 7:010			103 KAR 27:130		
Amended	1237		Amended	1849	
Withdrawn		12-16-08	103 KAR 30 091		
10 KAR 7:020			Amended	96	
Amended	1239		Amended	580	
Withdrawn		12-16-08	As Amended	772	10-31-08
11 KAR 3:100			103 KAR 31:190	1952	
Amended	63	9-8-08	103 KAR 31:200	452	
11 KAR 5:200			As Amended	777	10-31-08
Amended	949		105 KAR 1:130		
11 KAR 8:030			Amended	969	
Amended	950		105 KAR 1:140		
As Amended	1424		Amended	970	
11 KAR 8.040			As Amended	1719	
Amended	954		105 KAR 1:160		
As Amended	1426		Amended	101	10-3-08
11 KAR 14:060			105 KAR 1:170		
Amended	957		Amended	103	
As Amended	1428		As Amended	536	10-3-08
11 KAR 14:080			105 KAR 1:180		
Amended	959		Amended	105	10-3-08
As Amended	1429		105 KAR 1 200		
11 KAR 15:090			Amended	108	
Amended	961		As Amended	536	10-3-08
As Amended	1430		105 KAR 1.210		
Withdrawn		12-16-08	Amended	111	
Amended	1840		As Amended	538	10-3-08
11 KAR 18.010		(See 34 Ky.R.)	105 KAR 1:220		
As Amended	10	8-1-08	Amended	115	
Amended	965		As Amended	541	10-3-08
As Amended	1432		105 KAR 1.240		
16 KAR 3:050			Amended	117	10-3-08
Amended	77		105 KAR 1:270		
As Amended	758	10-13-08	Amended	119	10-3-08
16 KAR 5:020			105 KAR 1:310		
Amended	80		Amended	121	
As Amended	535	9-8-08	As Amended	542	10-3-08
16 KAR 6 010			105 KAR 1:330		
Amended	1842		Amended	124	10-3-08
16 KAR 7:010		(See 34 Ky.R.)	105 KAR 1:345	1094	
As Amended	11		As Amended	1721	
17 KAR 3:020			105 KAR 1.360		
Amended	611	12-4-08	Amended	127	
17 KAR 4:020	1369		As Amended	544	10-3-08
As Amended	1719		105 KAR 1:370		
17 KAR 5:010	1093		Amended	128	
			As Amended	544	10-3-08

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	1850		Amended	1856	
105 KAR 1:380			201 KAR 22:040		
Amended	973		Amended	1857	
As Amended	1722		201 KAR 22:053		
105 KAR 1:390			Amended	1859	
Amended	975		201 KAR 27:100	456	
As Amended	1723		Amended	1200	
105 KAR 1:400	1096		As Amended	1438	
As Amended	1726		201 KAR 28:090		
105 KAR 1:420			Amended	991	
Amended	979		201 KAR 30:010		
As Amended	1729		Amended	1245	
105 KAR 1:430			201 KAR 30:030		
Amended	980		Amended	618	
As Amended	1730		As Amended	1732	
105 KAR 1:440	1953		201 KAR 32:020		
200 KAR 5:390	676		Amended	1861	
As Amended	1151	12-5-08	201 KAR 32:025		
200 KAR 17:090	453		Amended	1863	
As Amended	778	10-31-08	201 KAR 32:030		
201 KAR 1:160			Amended	1866	
Amended	616		201 KAR 32:035	1956	
As Amended	1151	12-5-08	201 KAR 32:042	1958	
201 KAR 1:171(r)	678	12-5-08	201 KAR 32:070		
201 KAR 2:105			Amended	1867	
Amended	982		201 KAR 33:020		
Amended	1826		Amended	1869	
201 KAR 2:230			201 KAR 35:020		
Amended	1851		Amended	318	
201 KAR 2:310	1954		As Amended	783	10-15-08
201 KAR 5:120	1673		201 KAR 35:040		
201 KAR 7:015			Amended	320	
Amended	985		As Amended	784	10-15-08
201 KAR 9:011	455		201 KAR 35:050		
201 KAR 10:050			Amended	324	
Amended	316		As Amended	787	10-15-08
As Amended	1152		201 KAR 35:060	461	
Withdrawn		10-15-08	As Amended	787	10-15-08
201 KAR 12:105			201 KAR 35:070	463	
Amended	1853		As Amended	789	10-15-08
201 KAR 14:150			201 KAR 35:080	465	
Amended	986		As Amended	1153	12-5-08
As Amended	1435		201 KAR 36:070		
201 KAR 16:015			Amended	1871	
Amended	1854		201 KAR 41:020		
201 KAR 16:110		(See 34 Ky.R.)	Amended	620	
As Amended	779	10-31-08	As Amended	1442	
201 KAR 17:014	1370		201 KAR 41:040		
As Amended	1730		Amended	622	
201 KAR 17:030			As Amended	1443	
Amendment	1245		201 KAR 41:060		
As Amended	1730		Amended	624	
201 KAR 18:072			As Amended	1444	
Amended	988		201 KAR 41:065	679	
As Amended	1436		As Amended	1445	
201 KAR 18:210		(See 34 Ky.R.)	201 KAR 41:070		
As Amended	257	9-5-08	Amended	626	
201 KAR 20:070		(See 34 Ky.R.)	As Amended	1445	
As Amended	258	9-5-08	202 KAR 7:030		
201 KAR 20:161			Amended	326	
Amended	1505		Amended	850	
201 KAR 20:400			As Amended	1447	
Amended	1507		202 KAR 7:330	467	12-5-08
201 KAR 20:410			202 KAR 7:510		
Amended	317		Amended	328	12-5-08
As Amended	781	10-15-08	As Amended	1156	
201 KAR 21:041			300 KAR 6:020	204	
Amended	989		As Amended	544	
As Amended	1437		301 KAR 1:125		
201 KAR 21:070			Amended	992	
Reprint	48		Amended	1829	
201 KAR 22:020			301 KAR 1:130		(See 34 Ky.R.)

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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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230.240	810 KAR 1:018	243.850	922 KAR 3 050
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